



929

Town of Nags Head

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NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 12-00925

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


(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 27th day of September 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 MACCONNELL AND ASSOCIATES, P.C. 1903 North Harrison Ave., Suite 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:

Task 1 Initial project "Kick Off" meeting with Town of Nags Head Officials. The meeting will be conducted following a "Notice of Award" for engineering services. An initial site visit will also be conducted as part of this meeting. Fee: \$1,000.00.

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, design alternatives, recommendation and construction procedures. Fee: \$2,000.00.

Task 3 Final design specifications, drawings, and required permit application submittals will be developed for the Town of Nags Head Gull Street Storage Tank Re-piping Project. Fee: \$3,000.00.

Task 4 Permit review by the North Carolina Department of Environmental and Natural Resources Public Water Supply Section. Fee: Included in Task 3 above.

Task 5 After the permit has been received, solicit bids from contractors. Due to the estimated cost of the construction to be undertaken, an informal bidding process will be followed. Assist the Town with contract preparation and award of Contract. Fee: \$1,000.00.

Task 6 Construction oversight and contract administration will be conducted throughout the entire construction process. Fee: \$2,000.00.

Task 7 A final inspection and Engineer's Certification will be conducted to close out the project. Fee: \$1,000.00.

Items not Included:

- Surveying (existing drawings will be used).
- NCDENR - Erosion and sedimentation control and/or stormwater permit submittal (assumes less than one acre of disturbed area).
- Permit Fees: Permit and plan review fees will be paid by the TOWN directly.
- Additional site visits.
- Any out of scope services not listed above shall be by amendment to this contract.

Total contract price is \$10,000 (Ten Thousand Dollars and Zero Cents). Price is in accordance with CONTRACTOR's proposal, dated September 9, 2011 (copy attached).

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence no later than SEPTEMBER 30, 2011 and the contract completion date shall be MAY 1, 2012 with time being of the essence. If CONTRACTOR fails to complete work under this contract by MAY 1, 2011, 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 (One Hundred Dollars and No Cents) 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 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

To reduce the Total Trihalomethane (TTHM) formation potential in the Gull Street ground storage tank and in order to meet compliance in December 2013 with the Stage II Disinfection-Disinfection by Product Rule, the piping at the Gull Street ground storage tank is to be redesigned to provide separate inlet and outlet flow. In addition, the installation of a mechanical mixing device to improve water quality is to be evaluated.

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 services. 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 services 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

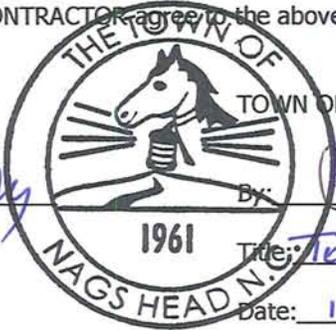
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

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

Witnessed or Attested By:

Miriam H. Gray



TOWN OF NAGS HEAD

By: *[Signature]*

Title: Town manager

Date: 10/4/11

[Signature]

Corporate Seal:

CONTRACTOR

By: *[Signature]*

Printed Name: Garry S. MacConnell

Title: President

Date: 9/28/11

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

[Signature]
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY

AGREEMENT FOR SERVICES

This Agreement is made and entered into this 9th day of September, 2011 by and between

MacConnell & Associates, P.C. (“M&A”)

and

Town of Nags Head, North Carolina (“Client”)

for

Gull Street Storage Tank Re-piping Project

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:

- Task 1 Initial project “Kick Off” meeting with Town of Nags Head Officials. The meeting will be conducted following a “Notice of Award” for engineering services. An initial site visit will also be conducted as part of this meeting. Fee: \$1,000.00.
- 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, design alternatives, recommendation and construction procedures. Fee: \$2,000.00.
- Task 3 Final design specifications, drawings, and required permit application submittals will be developed for the Town of Nags Head Gull Street Storage Tank Re-piping Project. Fee: \$3,000.00.
- Task 4 Permit review by the North Carolina Department of Environmental and Natural Resources Public Water Supply Section. Fee: Included in Task 3 above.
- Task 5 After the permit has been received, solicit bids from contractors. These bids will be issued for work to be done under an informal contract. Assist the Town with contract preparation and award of Contract. Fee: \$1,000.00.
- Task 6 Construction oversight and contract administration will be conducted throughout the entire construction process. Fee: \$2,000.00.
- Task 7 A final inspection and Engineer’s Certification will be conducted to close out the project. Fee: \$1,000.00.

Items not Included:

1. Surveying (We plan on using information from existing drawings).
2. NCDENR - Erosion and sedimentation control and/or stormwater permit submittal (assumes less than one acre of disturbed area).
3. Permit Fees: Any permit and plan review fees paid by M&A shall be reimbursed at cost plus 15 percent by Client.
4. Additional site visits.
5. Any out of scope services not listed above shall be by amendment to this contract.

Fees: Fees for services are identified above. Costs for six sets of drawings per item are included in above fees. Additional sets shall be \$2.00/sheet.

Billing and Payment: Client shall pay M&A for the services performed and expenses incurred in accordance with the fees set forth above. An invoice will be submitted monthly upon completion of a task as outlined above. All invoices are due and payable upon receipt. Invoices are past due after 15 days. Past due amounts are subject to a late payment charge of 1 ½ % monthly (18 % per annum). Attorney's fees and other reasonable costs incurred in collecting past due amounts shall be paid by Client. In addition to collecting interest on unpaid balances, M&A without liability may withhold delivery of reports and other data and may suspend performance of its obligations to Client pending full payment of all past due charges.

Proposal Acceptance: Client hereby accepts M&A's Proposal, which is incorporated herein, and all other terms and conditions set forth in this Agreement including the additional terms and conditions set forth BELOW. M&A objects to any additional terms and conditions contained in any purchase order or similar document, if any, issued by Client in connection with this project, and they are specifically excluded from this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representative.

Name, Title

Gary S. MacConnell, PE, President

By _____
For Town of Nags Head

By _____
For MacConnell & Associates, P.C.

TERMS AND CONDITIONS

1. SERVICES TO BE PROVIDED.

M&A is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, the consulting services set forth in the Proposal.

2. TERMINATION.

Either party may terminate this Agreement without cause upon written notice to the other party. In the event Client requests termination prior to completion, Client agrees to pay M&A for all costs incurred plus reasonable charges associated with termination of the work.

3. STANDARD OF CARE.

M&A will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of its profession practicing in the same or similar locality. NO OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED AND WHETHER OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IS MADE OR INTENDED BY THIS AGREEMENT OR BY M&A'S ORAL OR WRITTEN REPORTS.

4. PROFESSIONAL LIABILITY.

Client agrees that M&A's liability to Client or any third party due to any negligent professional acts, errors or omissions will be limited to M&A's total fees paid by Client for this project. Client agrees that in no event shall M&A, its officers, directors, employees, agents, or shareholders be liable for any special, incidental, consequential or similar type damages, direct or indirect, arising from M&A's services under this Agreement. If client elects to not use M&A for final inspection and Engineer's Certification, client agrees to waive professional liability and hold M&A harmless.

5. PROJECT SITE.

Client will arrange for right-of-entry to the property for the purpose of performing studies, tests, evaluations and remediation activities pursuant to the Proposal. Client agrees to disclose the identity of all utilities serving the project site and the presence and accurate location of hidden or obscure man-made objects known to Client relative to field tests or boring locations. Client agrees to indemnify and hold harmless M&A from all claims, suits, losses, personal injuries, death, and property liability resulting from damage or injury to structures (pipes, tanks, telephone cables, etc.) arising from the performance of M&A's services when the existence of such are not called to its attention or the location is not correctly shown on the plans furnished to it. Client agrees that the forgoing indemnification and hold harmless provision also applies to any activity on property adjacent to or nearby the primary project site such as, but not limited to, installing monitoring wells which M&A may undertake pursuant to this Agreement.

6. SAFETY.

M&A shall not be responsible for site safety or safety of Client's contractors, agents, or employees. M&A shall have right to direct or stop the work of Client's contractors, agents, or employees.

7. UNFORESEEN CONDITIONS OR OCCURRENCES.

It is possible that unforeseen conditions or occurrences may be encountered by M&A which could substantially alter the necessary services or the risks involved in completing its services. If this occurs, M&A will promptly notify and consult with Client, but will act based on its sole judgment where risk to its personnel is involved. Possible actions include but are not limited to (1) agreeing with Client to modify the scope of services and the estimate of charges based on the unforeseen conditions of occurrences, with such revision agreed to in writing, or (2) terminating the services on the date specified by M&A in writing

8. SAMPLES.

Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests and analysis. Upon written request, M&A will retain samples for a mutually acceptable storage charge and period of time. In the event that samples contain or may contain hazardous materials, M&A shall, after completion of testing and at Client's expense, (a) return such samples to Client, or (b) using a manifest signed by Client as generator, have such samples transported to a location selected by Client for final disposal. Client recognizes and agrees that M&A is acting as a bailee and at no time assumes title to said samples.

9. CLIENT DISCLOSURE.

Client agrees to advise M&A upon execution of this Agreement of any hazardous substances or any condition, known by Client, existing in, on or near the site that presents a potential danger to human health, the environment, or equipment. Client agrees to provide continuing information as it becomes available to the Client in the future. By virtue of entering into this Agreement or of providing services hereunder, M&A does not assume control of or responsibility for the site or the person in charge of the site, or undertake responsibility for reporting to any federal, state, or local public agencies any conditions at the site that may present a potential danger to public health, safety, or the environment. Client agrees it is his sole responsibility to notify the appropriate federal, state, or local public agencies as required by law, or otherwise to disclose, in a timely manner, any information that may be necessary to prevent any danger to health, safety, or the environment.

10. GOVERNING LAW.

This Agreement shall be governed in all respects by the laws of the State of North Carolina.

11. ENVIRONMENTAL INDEMNITY.

In connection with toxic or hazardous substances or constituents, Client agrees to the maximum extent permitted by law to defend, hold harmless, and indemnify M&A and from and against any and all claims and liabilities, unless caused solely by M&A's gross negligence, resulting from:

- (a) Client's violation of any federal, state, or local statute, regulation, or ordinance relating to the discharge or disposal of toxic or hazardous substances or constituents, including petroleum products.
- (b) Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation, or disposal of toxic or hazardous substances or constituents found or identified at the site.
- (c) Toxic or hazardous substances or constituents introduced at the site by Client or third persons before or after the completion of services herein.
- (d) Allegations that M&A is handler, generator, operator, treater, or storer, transporter, disposer, or otherwise a responsible party under the Resource Conservation and Recovery Act of 1976 as amended or any other federal, state, or local regulation or law.

If any third party brings suit or claim against M&A alleging injury or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during, or after the services of the Agreement, Client agrees to the maximum extent permitted by law to defend M&A and pay on its behalf any judgment resulting against M&A, including interest and attorneys fees thereon, unless such damages are caused solely by M&A's gross negligence.

12. DOCUMENTS.

M&A will furnish to Client the agreed upon number of reports and supporting documents. All reports and written documents delivered to Client are instruments reflecting the services provided by M&A pursuant to this Agreement and are provided for the exclusive use of Client on that project and are not to be used or relied upon in connection with other projects or by third parties. Any unauthorized use or distribution shall be at Client's sole risk and without liability to M&A. Except for Client's use on the project described herein, all such reports, other written documents, all original data gathered by M&A and work papers produced by M&A in the performance of the services are, and shall remain, the sole and exclusive property of M&A.

13. SURVIVAL.

All obligations arising prior to the termination of this Agreement allocating responsibility or liability between the Client and M&A shall survive the completion of the services and the termination of this Agreement

14. CONFIDENTIALITY.

Subject to any obligation M&A may have under applicable law or regulation or unless compelled by order of a court or regulatory body of competent jurisdiction, M&A will maintain as confidential any documents or information provided by Client indicated to be confidential and will not release, dispute, or publish such to any third party, except for use by M&A employees or subcontractors as necessary for the performance of services under this Agreement, without prior permission from Client.

15. CLAIMS.

The parties agree to attempt to resolve any dispute without resort to litigation. However, in the event a claim is made that results in litigation, and the claimant fails to prevail, then the claimant shall pay all costs incurred in defending the claim, including reasonable attorney's fees. The claimant will be considered to have prevailed only if the judgment obtained and retained through any applicable appeal is at least ten percent greater than the sum offered to resolve the matter prior to the commencement of trial. Any litigation between Client and M&A under this agreement shall be filed and tried only in a court of competent jurisdiction within North Carolina.

16. SEVERABILITY.

In the event that any provision of this Agreement is found to be unenforceable, the other provisions shall remain in full force and effect.

17. INTEGRATION.

This Agreement constitutes the entire Agreement between the parties and cannot be exchanged except by a written instrument signed by both parties.

18. FACSIMILE/ELECTRONIC MAIL.

Both parties hereby acknowledge and agree that (1) this agreement may be signed and delivered using facsimile machines or electronic mail (email), and (2) both parties intend that this agreement shall be deemed signed and shall be binding on a party when such party signs this agreement and transmits it to the other party using a facsimile machine or email, and (3) both parties intend that any such signed facsimile or email transmission of this agreement shall constitute an original counterpart of this agreement.

Pg

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

12-00925

ORDER DATE: 10/04/11
REQUISITION NO: R1200300
DELIVERY DATE: 09/27/11
STATE CONTRACT:
F.O.B. TERMS: Destination

VENDOR #: MACC010

MACCONNELL & ASSOCIATES, PC
1903 NORTH HARRISON AVE
SUITE 102
CARY, NC 27513

Phone: (919)467-1239 Fax: (919)319-6510

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	eng serv for Gull st improveme	2-61-810-6-5773-00 CAPITAL OUTLAY OTHER	10,000.0000	10,000.00
			TOTAL	10,000.00

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.