



Town of Nags Head

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NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 13-01356

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


(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the December 3, 2012, 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 Utility Service Company, Inc., (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: The Contractor shall furnish and deliver all of the materials and perform all of the work in the manner and form, as provided by the following enumerated plans, specifications, and documents, which are attached hereto and made a part hereof as if fully contained herein: General Conditions, Supplemental General Conditions, Contract Specifications, Addenda, Construction Contract, Power of Attorney, Insurance Certificates, and Contract Drawings entitled: Repaint South Nags Head Elevated Tank dated: August 30, 2012 for General Construction.

CONTRACT AMOUNT (Including Alternate Bid Items 3A and 4A) is \$128,900.00 (One hundred twenty-eight thousand nine hundred dollars and no cents), in accordance with CONTRACTOR's bid, dated October 11, 2012 (copy attached).

The repainting portion of this work will cost \$86,500.00 (Eighty-six thousand five hundred dollars and no cents). The mixer portion of the work will cost \$42,400.00 (Forty-two thousand four hundred dollars and no cents). Both are in accordance with the attached CONTRACTOR's bid dated October 11, 2012.

LIQUIDATED DAMAGES: Liquidated damages shall accrue at a rate of \$200.00 per day following the 100 percent complete date.

It is mutually agreed by and between the TOWN and CONTRACTOR that construction or work under this contract will commence no later than January 1, 2013. The contract completion dates shall be March 29, 2013 for substantial completion and April 26, 2013 for final completion.

with time being of the essence. If CONTRACTOR fails to complete work under this contract by April 26, 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

The project shall be constructed as contained in the construction documents titled: Repaint South Nags Head Elevated Tank dated: August 30, 2012 for General Construction. The major features of the project include: installation of mixing system, preparation and spot repainting of the interior of the tank, preparation and repainting of the exterior of the tank, SCADA modifications, cleaning and disinfection of tank and mixer, replace gaskets, and electrical work.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from December 3, 2012 to May 15, 2013. 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 during which SERVICES are performed. 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. 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:


TOWN OF NAGS HEAD
 By: [Signature]
 Title: TOWN MANAGER
 Date: 12/13/12

[Signature]
 Shane Albritton, Secretary
 Corporate Seal:

CONTRACTOR UTILITY SERVICE CO., INC.

By: [Signature]

Printed Name: Jonathan Cato

Title: V.P. of Tank Operations

Date: December 4, 2012

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

[Signature] 12/13/12
 Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
 TOWN ATTORNEY

Base Bid Price - Table 1

1. Base Bid: Town of Nags Head – Repaint South Nags Head Elevated Tank.

Item No.	Description	Unit Price	Estimated Quantity	Units	Extended Price
	<i>GENERAL</i>				
1	Mobilization, Bonding, and Temporary Facilities	\$ 3,500 ⁰⁰	1	L.S.	\$ 3,500 ⁰⁰
2	PAX Tank Mix System	\$22,400.00	1	Each	\$22,400.00
3	Paint Exterior Base Bid	\$ 43,000 ⁰⁰	1	L.S.	\$ 43,000 ⁰⁰
4	Paint Interior Base Bid	\$ 20,000 ⁰⁰	1	L.S.	\$ 20,000 ⁰⁰
5	SCADA Integration	\$6,500.00	1	L.S.	\$6,500.00 \$6,500.00
6	Miscellaneous Tank Repairs	\$ 2,000 ⁰⁰	1	L.S.	\$ 2,000 ⁰⁰
7	Mixer & Electrical Work	\$ 12,500 ⁰⁰	1	Each	\$ 12,500 ⁰⁰
	TOTAL Base BID Sum of Items 1 Through 7				\$ 109,900 ⁰⁰

Alternate Bid Prices - Table 2

2. Alternate Bid Items: The following bid items may be substituted for their respective item in Table 1 above. Engineer may recalculate the total above with the alternate bids if they are chosen. Award will be based on the combination the Owner chooses, with or without any of the alternate bid items.

Item No.	Description	Unit Price	Estimated Quantity	Units	Extended Price
	<i>GENERAL</i>				
3A	Paint Exterior Alternate Bid	\$ 60,000 ⁰⁰	1	L.S.	\$ 60,000 ⁰⁰
4A	Paint Interior Alternate Bid	\$ 22,000 ⁰⁰	1	L.S.	\$ 22,000 ⁰⁰

We agree to begin work on a starting date to be set by the Engineer, after contract award has been made and to substantially complete all work by March 29, 2013 and to fully complete all work by April 26, 2013. This assumes that the contract will be awarded by October 30, 2012.

It is further agreed that, if default is made in any of the completion requirements described above, Town of Nags Head, North Carolina shall deduct as liquidated damages, the sum of two hundred dollars and no cents (\$200.00) per day as set forth in Supplemental General Condition for each and every calendar day completion is delayed in excess of the contract time as set forth above. This amount is agreed upon as reasonable due to the effect of each section of the work on the time of completion of the entire project.

A (~~certified check~~) (*bid bond*) in the amount of five (5) percent of the bid is hereto attached.

Respectfully submitted this 11th day of October, 2012.

North Carolina License Number: 52520

FIRM: _____

BY: _____

TITLE: _____

ADDRESS: _____

OR

CORPORATION: Utility Service Co., Inc.

BY: Jonathan Coto

TITLE: V.P. of Tank Operations

STATE: Georgia

PRESIDENT: Chris Boyd

SECRETARY: Shane Albritton

TREASURER: Ismael Olmedo

ADDRESS: 535 Courtney Hodges Blvd.

Perry, GA 31069

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

13-01356

ORDER DATE: 12/04/12
 REQUISITION NO: R1300423
 DELIVERY DATE: 11/30/12
 STATE CONTRACT:
 F.O.B. TERMS: Destination

VENDOR #: UTILITY

UTILITY SERVICE COMPANY INC
 P O BOX 1330
 PERRY, GA 31069

Phone: (478)987-0303 Fax: (478)988-5220

UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	painting SNH tower	3-61-810-6-5436-00 MAINT/REPAIR EQUIPMENT	86,500.0000	86,500.00
1.00	install mixer at SNH tower	3-61-810-6-5774-00 CAPITAL OUTLAY EQUIPMENT	42,400.0000	42,400.00
			TOTAL	128,900.00

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.