



## Town of Nags Head

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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 12<sup>th</sup> day of April 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 NATIONAL EVENTS MANAGEMENT CORPORATION 400 Esmont Court Chesapeake, VA 23322, (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:

CONTRACTOR shall organize, supervise, produce and manage a celebration event for the Town's 50<sup>th</sup> Anniversary Celebration (hereinafter "the Event") to be held June 14-18, 2011. Carnival hours of operation shall be 5:30 PM – 11:30 PM, with the exception of June 14, 2011– start time to directly follow the Town of Nags Head 50<sup>th</sup> Anniversary Celebration Ceremony. The specific services as set forth below in the Description of Project.

There shall be no charge to the Town for these services.

The Event will be held on June 14-18, 2011 at Windmill Point in Nags Head, North Carolina. In the event CONTRACTOR fails to comply with its obligation to provide the Event described herein, liquidated damages shall be charged to CONTRACTOR in the amount of \$500.00 per day for each day, or

portion thereof, on which the Event is not held between June 14-18, 2011, inclusive.

A. Force Majeure. Neither Contractor nor Operator shall be held liable or responsible if the failure to perform the services described herein arises out of unforeseeable and unexpected causes beyond the control and without the fault or negligence of Contractor or Operator. Such causes may include, but are not restricted to acts of God or the public enemy, unlawful acts, [delete: acts of the city in either its sovereign or contractual capacity] fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Contractor or Operator. "Force Majeure" specifically excludes both financial inability to perform and economic conditions.

2. DESCRIPTION OF PROJECT

CONTRACTOR shall perform as follows:

1. CONTRACTOR agrees to furnish amusements and activities for the Event consisting of a minimum of **7** rides.

a. A maximum of **8** games of skill games of skill of which CONTRACTOR will pay to the Town Fifty and 00/100 (\$50.00) per game.

b. A maximum of **6** food concessions and a minimum of **1** food concessions of which CONTRACTOR will pay the Town Fifty and 00/100 (\$50.00) per food concession.

2. CONTRACTOR agrees to pay the Town Ten (10%) percent of gross income on rides and shows starting at Twenty five Thousand and one (\$25,001.00) after applicable taxes, licenses and permits are deducted. Any and all revenue on rides and shows up to Twenty Five Thousand shall be exempt from payment.

It is further agreed that CONTRACTOR will have exclusive rights for all rides and shows for which admission is charged and all concessions, except for festival vendors, exhibitors and Town-conducted activities.

3. Tickets, and ticket booths will be provided by CONTRACTOR.

4. Power will be provided by CONTRACTOR.

5. Business license will be provided by CONTRACTOR.

6. CONTRACTOR will obtain all necessary permits including Mechanical inspection permit from North Carolina Dept. of Labor and Health Department permit.

7. CONTRACTOR, its agents or contractors, will furnish and provide rides and shows adequate and appropriate to the area, subject to approval by the Town. The quality, standard and character of the midway shall be diversified and of high standard as to create and maintain the confidence of the public, visitors, and customers.

CONTRACTOR agrees to have all rides well painted, well lighted and maintained in excellent and safe condition and in accordance with statutory regulatory safety standards pertaining thereto prescribed by applicable federal, state, city and county governments and industry practices and recommendations.

8. CONTRACTOR, its agents, employees, servants, or contractors shall at all times maintain the operations of rides and activities in the said midway area as set forth herein and shall comply with applicable laws and regulations.

9. Rides and concession personnel will wear a show uniform and be polite, helpful, clean and neat in overall appearance, manners and speech.

### 3. TERM OF CONTRACT

The term of this CONTRACT is from March 21, 2011 to June 30, 2011. 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.

### 4. PAYMENT TO CONTRACTOR

The CONTRACTOR shall submit an itemized accurate report of revenue and account for the Town's percentage to the TOWN by June 30, 2011. Payment will be processed promptly upon receipt and approval by the TOWN of the revenue report.

The Town will provide to CONTRACTOR at no charge police security during times of public attendance at the Event. The parties will coordinate the location of all Event parking, Event components (e.g., booths, rides, attractions, etc.) and the provision of port-o-lets, water and signage.

### 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 and any agents or contractors contracted by NEMC shall obtain and keep in full force and effect during the carnival a policy or policies of liability insurance with respect to the premises occupied or used by the CONTRACTOR, its agents or contractors, pursuant to this Agreement, including but not limited to the midway, shows, rides and games located on the property where amusement and carnival activities, where the Town shall be named as additional insured with primary limits of liability of not less than Five Million Dollars (\$5,000,000.00) for injury or death to one or more personal (premises/operation, products/completed operations, and contractual liability), with respect to damage to property per occurrence. The CONTRACTOR shall furnish the Town prior to the opening of the carnival with certificates or other evidence of insurance, evidencing (a) that the insurance is as described, (b) that the insurance is with a recognized insurer and (c) that the insurance is in effect for the time prescribed herein.

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.

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.

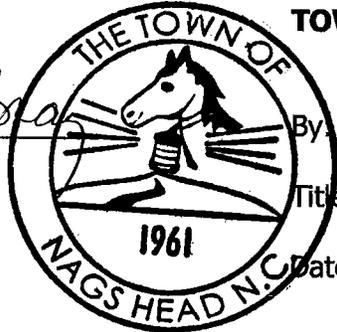
12. SIGNATURES

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

Witnessed or Attested By:

**TOWN OF NAGS HEAD**

Michelle A. [Signature] By: [Signature]  
Title: Town Manager  
Date: 4-12-11



\_\_\_\_\_  
Corporate Seal:

**CONTRACTOR**

By: [Signature]

Printed Name: National Events Management Corporation

Title: PRESIDENT

Date: 3/30/11

"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