



## Town of Nags Head

Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
www.townofnagshead.net

NORTH CAROLINA  
DARE COUNTY

SERVICE CONTRACT  
PURCHASE ORDER # 12-02378

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

  
(CONTRACTOR initials)

THIS CONTRACT is made and entered into this the 28<sup>th</sup> day of February 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 A.C. Schultes of Carolina, Inc., 3887 S. NC 41, Wallace, North Carolina, 28466, (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 thereof as if fully contained herein: General Conditions, Supplemental General Conditions, Contract Specifications, Addenda, Construction Contract, Power of Attorney, Insurance Certificates, and Contract Drawings entitled: Gull Street Tank Pipe Rerouting/Mixing dated: November 30, 2011 for General Construction.

Total contract price is \$138,650.00 (One hundred thirty-eight thousand six hundred and fifty dollars and no cents). Price is in accordance with CONTRACTOR's Proposal dated the 25<sup>th</sup> day of January, 2012 (copy attached).

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

It is mutually agreed by and between the TOWN and CONTRACTOR that construction or work under this contract will commence no later than March 5, 2012. The contract completion date shall be May 25, 2012 with time being of the essence. If CONTRACTOR fails to complete work under this contract by May 25, 2012, 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: Gull Street Tank Pipe Rerouting/Mixing dated: November 30, 2011 for General Construction. The major features of the project include: installation of mixing system, core drilling of tank and installing stainless steel sleeve, installation of rerouted piping and valves, SCADA modifications, cleaning and disinfection of tank and mixer, replace hatch, and electrical work.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from February 28, 2012 to June 15, 2012. 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 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.

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 H. Gray



TOWN OF NAGS HEAD

By: [Signature]  
Title: TOWN MANAGER  
Date: 3/7/12

Witnessed By:

Melissa G. Luffield

Corporate Seal:

CONTRACTOR

By: [Signature]

Printed Name: William J. Jefferys

Title: President

Date: 2-29-12

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

[Signature] 3-7-12  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]  
TOWN ATTORNEY

# PROPOSAL

Date: January 25, 2012

The undersigned hereby signifies it is his intention and purpose to enter into a Construction Contract to furnish labor, materials, equipment, apparatus, etc. and to complete all work necessary and required for and because of the construction for the Town of Nags Head, North Carolina " Gull Street Tank Pipe Rerouting/Mixing" project in accordance with the terms of the Invitation to Bid, Instructions to Bidders, Information for Bidders, General Conditions, Supplemental General Conditions, Contract Drawings, Contract Specifications, all Addenda, this Proposal, and the following form of the Construction Contract. The Proposal shall be an integral part of the Contract Documents and, pursuant with the requirements of the Invitation to Bid and Instructions to Bidders, there is deposited herewith as bid security a (*certified check*) (*bid bond*) in the amount of:

5% Dollars (\$ 5% )

payable to Town of Nags Head, North Carolina, the same to be refunded to the undersigned under the conditions and in compliance with the terms of this Proposal, which are as follow:

**THAT:** The undersigned carefully examined the Invitation to Bid, the Instructions to Bidders, the Information for Bidders, the General Conditions, the Supplemental General Conditions, the Addenda, the Contract Specifications, the Contract Drawings, this Proposal, and the Construction Contract and fully understands them.

**THAT:** The undersigned carefully examined the site or sites of the project or projects and is familiar with the conditions under which the work, or any part of it, is to be done and the conditions which must be fulfilled in furnishing and/or erection or construction of any or all items of the project, and the furnishing only of any materials, equipment, or apparatus specified in connection therewith.

**THAT:** The undersigned will provide all necessary tools, machinery, apparatus, and all means necessary to do all the work and will furnish all materials, equipment, apparatus, and all else necessary to complete such contract as may be entered into, in the manner prescribed in the Construction Contract and Contract Specifications and according to the Contract Drawings and requirements under them of the Engineer, in a first class manner.

**THAT:** It is the intention of Town of Nags Head, North Carolina, subject to the conditions set forth, to award contracts for the project on the basis of bids received at this letting and in such manner as they may decide on being in the best interest of the Town of Nags Head, North Carolina.

**THAT:** Should the aggregate of all separately listed items exceed available funding or if Town of Nags Head, North Carolina determines that it is in its best interest, Town of Nags Head, North Carolina may elect to award contracts with selected items not included. Each item is intended as

a complete separate work item which includes furnishing all materials, equipment, and labor for constructing the item and placing it into service.

**THAT:** Should this Proposal not be accepted by Town of Nags Head, North Carolina, the above certified check, in the amount designated, will be returned to the undersigned. Bid bonds will not be returned, except on request of the bidder.

**THAT:** Should this Proposal be accepted by Town of Nags Head, North Carolina, and the undersigned fail or neglect to execute such proposed contract within ten (10) calendar days after receiving notification from Town of Nags Head, North Carolina that such Proposal was accepted, the bid security in the amount designated above shall be retained by Town of Nags Head, North Carolina as liquidated damages. Town of Nags Head, North Carolina reserves the right to extend the time allowed for executing the Construction Contract.

**THAT:** Town of Nags Head, North Carolina reserves the right to reject any or all Proposals.

**THAT:** A Proposal made by a corporation must be signed by its proper officers in a legal manner and its official address stated therein.

**THAT:** A Proposal made by a firm shall be signed with the name of each member of said firm and the firm name added, with the official address of said firm.

**THAT:** The undersigned will complete such Construction Contracts, as it is hereby proposed to enter into within the time stated herein.

**THAT:** The undersigned will enter into a contract in accordance with the Invitation to Bid, the Instructions to Bidders, the General Conditions, the Supplemental General Conditions, the Addenda, the Contract Specifications, the Contract Drawings, this Proposal, and the Construction Contract for Town of Nags Head, North Carolina for the following price or prices.

## **ARTICLE 5 - BASIS OF BID**

5.01 Contractor may provide quotes for solar based/grid backup, grid based, and/or solar based options. The Town of Nags Head reserves the right to select either option. Bidder will complete the Work in accordance with the Contract Documents for the following item(s) and price(s):

### **Item 1: Mobilization, Bonding, and Temporary Facilities**

For furnishing all materials, labor, equipment, supervision, and all else necessary to mobilize for construction, procure all required bonds and construction permits, as well as to install temporary facilities associated with the Water Tank Mixing System project for the Town of Nags Head called for in these specifications which are not included in items listed herein.

**Item 2A: Solar Based/Grid Backup Water Tank Mixing System**

For furnishing all materials, labor, equipment, supervision, and all else necessary to add one complete solar based with grid backup water tank mixing system to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

**Item 2B: Grid Based Water Tank Mixing System**

For furnishing all materials, labor, equipment, supervision, and all else necessary to add one complete grid powered water tank mixing system to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

**Item 2C: Solar Based Water Tank Mixing System**

For furnishing all materials, labor, equipment, supervision, and all else necessary to add one complete solar powered water tank mixing system to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

**Item 3: Piping and Valve Modifications**

For furnishing all materials, labor, equipment, supervision, and all else necessary to make piping and valve modifications to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

**Item 4: Core Drill and Install Sleeve in Tank Wall (By CECS)**

For furnishing all materials, labor, equipment, supervision, and all else necessary to core drill and install stainless steel sleeve to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein. This work shall be subcontracted to Crom Engineering & Construction Services (CECS), Inc. as outlined in their proposal 11-149, dated November 23, 1011.

**Item 5: Install New Manway Cover**

For furnishing all materials, labor, equipment, supervision, and all else necessary to install new manway cover with gasket and hardware (bolts) to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

**Item 6: Electrical and Instrumentation Work**

For furnishing all materials, labor, equipment, supervision, and all else necessary to install electrical and instrumentation modifications for tank mixing system (selected) to the 500,000 gallon ground storage tank on Gull Street for the Town of Nags Head: including all items relating to these services, and all other items shown on the Engineer's drawings and called for in these specifications which are not included in items listed herein.

## Bid Price Table 1

### 1. Bids: Town of Nags Head - Gull Street Tank Pipe Rerouting/Mixing.

Item No.	Description	Unit Price	Estimated Quantity	Units	Extended Price
	<i>GENERAL</i>				
1	Mobilization, Bonding, and Temporary Facilities	3,000 <sup>00</sup>	1	L.S.	3,000 <sup>00</sup>
2A	Solar based/grid backup water tank mixing system. (Include in total for 2A Option).	48,000 <sup>00</sup>	1	Each	48,000 <sup>00</sup>
2B	Grid based water tank mixing system. (Include in total for 2B Option).	53,000 <sup>00</sup>	1	Each	53,000 <sup>00</sup>
2C	Solar based water tank mixing system. (Include in total for 2C Option).	42,500 <sup>00</sup>	1	Each	42,500 <sup>00</sup>
3	Piping and Valve Modifications.	40,000 <sup>00</sup>	1	L.S.	40,000 <sup>00</sup>
4	Core Drill and Install Sleeve in Tank Wall (By CECS).	\$17,900.00	1	Each	\$17,900.00
5	Install New Manway Cover.	2,500 <sup>00</sup>	1	Each	2,500 <sup>00</sup>
6	Electrical and Instrumentation Work.	22,250 <sup>00</sup>	1	L.S.	22,250 <sup>00</sup>
	<b>TOTAL BID with 2A</b> Sum of Items 1 Through 6 with 2A.	133,650 <sup>00</sup>			133,650 <sup>00</sup>
	<b>TOTAL BID with 2B</b> Sum of Items 1 Through 6 with 2B.	138,650 <sup>00</sup>			138,650 <sup>00</sup>
	<b>TOTAL BID with 2C</b> Sum of Items 1 Through 6 with 2C.	128,150 <sup>00</sup>			128,150 <sup>00</sup>

Contractor shall indicate manufacturer for basis of bid for each (2A, 2B, and/or 2C) option bid. Contractor shall circle only one manufacturer or write in manufacturer for "or equal".

2A. Solar-Based with Grid-backup Mixing System

1. PAX Water Technologies, Inc.
2. SolarBee, Inc.
3. Or Equal \_\_\_\_\_
4. No Bid

2B. Grid-Based Mixing System

1. PAX Water Technologies, Inc.
2. SolarBee, Inc.
3. Or Equal \_\_\_\_\_
4. No Bid

2C. Solar-Based Mixing System

1. PAX Water Technologies, Inc.
2. SolarBee, Inc.
3. Or Equal \_\_\_\_\_
4. No Bid

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 \_\_\_\_\_ and to fully complete all work by \_\_\_\_\_. This assumes that the contract will be awarded by \_\_\_\_\_.

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 25 day of January, 2012.

North Carolina License Number: 48474

<sup>n/a</sup>  
FIRM: A. C. Schultes of Carolina, Inc.

BY: William J. Jefferys  
TITLE: President  
ADDRESS: 3887 S NC 41 Hwy  
Wallace, NC 28466

OR  
CORPORATION: A.C. Schultes of Carolina, Inc.

BY: [Signature]  
TITLE: President  
STATE: North Carolina

PRESIDENT: William J. Jefferys

SECRETARY: Jeffrey A. DeMatte

TREASURER: Jeffery A. DeMatte

ADDRESS: 3887 S NC 41 Hwy  
Wallace, NC 28466

CORPORATE RESOLUTION

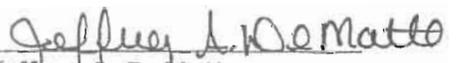
The undersigned, as Secretary of A. C. Schultes of Carolina, Inc. a corporation duly organized and existing under the laws of the State of Maryland, hereby certifies that a meeting of the Board of Directors of said Corporation was duly called and held at its office at 3887 South NC 41, in the state of North Carolina, on the 29th day of April 2009, that at said meeting a quorum was present and voting throughout; and that the following resolution on motion duly made and seconded was unanimously adopted and will be effective the 4th day of January, 2012, and is now in full force and effect:

RESOLVED, that the following officers have authority to sign bids contracts on behalf of A. C. Schultes of Carolina, Inc.

President:	William J. Jefferys
Vice President:	John T. O'Brien
Secretary:	Jeffrey A. DeMatte
Treasurer:	Jeffrey A. DeMatte

I FURTHER Certify that there is no provision in the Certificate of Incorporation or By-Laws of the said corporation limiting the power of the Board of Directors to pass the foregoing resolution, and that the same is in conformity with the provisions of said Certificate of Incorporation and By-Laws.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the said corporation and affixed the corporation seal this 4th day of January, 2012.

  
Jeffrey A. DeMatte  
Secretary

# ACKNOWLEDGMENT OF RECEIPT OF ADDENDUM

<u>ADDENDUM NO.</u>	<u>DATE RECEIVED</u>	<u>SIGNATURE</u>
ADD. #1	1-20-2012	Melissa A. D. [Signature]

## BID BOND

KNOW ALL MEN BY THESE PRESENTS: that we, the undersigned, \_\_\_\_\_  
A.C. Schultes of Carolina, Inc. \_\_\_\_\_ as Principal, and  
Arch Insurance Company \_\_\_\_\_ as Surety, are hereby  
held and firmly bound unto Town of Nags Head \_\_\_\_\_ as  
OWNER in the penal sum of Five Percent (5%) of Total Bid Amount \_\_\_\_\_  
for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves,  
successors, and assigns.  
Signed this 25th day of January, 2012.

The condition of the above obligation is such that whereas the Principal has submitted to  
Town of Nags Head \_\_\_\_\_ a certain BID, attached hereto and hereby made a part  
hereof to enter into a contract in writing, for the Gull Street Tank Pipe Rerouting/Mixing \_\_\_\_\_

NOW, THEREFORE,

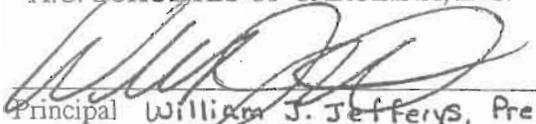
- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in  
the Form of Contract attached hereto (properly completed in accordance with said  
BID) and shall furnish a BOND for his faithful performance of said contract, and for  
the payment of all persons performing labor or furnishing materials in connection  
therewith, and shall in all other respects perform the agreement created by the  
acceptance of said BID, then this obligation shall be void; otherwise, the same shall  
remain in force and effect, it being expressly understood and agreed that the liability

of the Surety for all and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID, and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

A.C. SCHULTES OF CAROLINA, INC.

 (L.S.)  
Principal William J. Jefferys, President

ARCH INSURANCE COMPANY

Surety

By:   
Daniel P. Dunigan, Attorney in Fact

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

KAREN HEAGY  
TOWN OF NAGS HEAD  
PO BOX 99  
NAGS HEAD, NC 27959

12-02378

ORDER DATE: 03/05/12  
REQUISITION NO: R1200647  
DELIVERY DATE:  
STATE CONTRACT:  
F.O.B. TERMS: Destination

VENDOR #: ACSCH010

A.C. SCHULTES OF CAROLINA INC  
3887 S NC 41  
WALLACE, NC 28466-7315

Phone: (910)285-7465 Fax: (910)285-6501

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	Gull St. Repiping As per contract.	2-61-810-6-5773-00 CAPITAL OUTLAY OTHER	138,650.0000	138,650.00
			TOTAL	<hr/> 138,650.00

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.