



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 9th day of January 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 Earth Saver, LLC, 328 Oak Run, Kitty Hawk, NC 27949-9215 (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:

Provide all necessary materials and labor to remove, repair or replace storm damaged portions of the TOWN's public sound accesses located at Jockey's Ridge State Park (at 328 W Soundside Road), the Harvey Sound Access (at 6912 S Croatan Highway), and the Estuarine Access (at 7431 S Virginia Dare Trail). Work at each site will be as listed on CONTRACTOR's proposal sheets, dated 9-12-11 (copies attached). Total cost for all three sites will be \$56,500.00 (Fifty-six thousand five hundred dollars and no cents) in accordance with the CONTRACTOR's proposals.

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence no later than January 16, 2012. The contract completion date shall be April 6, 2012 with time being of the essence. If CONTRACTOR fails to complete work under this contract by April 6, 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 \$150.00 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

At the Jockey's Ridge Sound Access:

- Remove and replace the Handicap Access Ramp and Viewing Platform, in accordance with the original design plans, updated to meet NC and local Building Codes.

At the Harvey Sound Access:

- Remove/repair the handicap Access Ramp to the building;
- Remove/replace the damaged walkway to the sound;
- Replace damaged slats and boards;
- Repair damaged electrical lighting;
- Test/verify flood affected electrical components;
- Drain, check and reposition rainwater storage tank to pre-storm alignment;
- Work to be done in accordance with original plans, updated as required by NC and local Building Codes.

At the Estuarine Access:

- Replace damaged Port-a-John platform;
- Replace boardwalk section to gazebo;
- Replace boat landings, steps and ladders;
- Redrive lifted pilings on east-west section of boardwalk;
- Replace damaged picnic table in gazebo;
- Replace shingles on gazebo;
- Repair electrical lighting;
- Drive pilings (up to 12 total) uplifted by the storm surge to their original position along the east-west section of the boardwalk;
- Work to be done in accordance with original plans, updated as required by NC and local Building Codes.

All work sites will be cleaned up before, and following construction. Proper disposal of all damaged facility components is required.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from January 9, 2012 to April 30, 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 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: _____

Title: _____

Date: _____

CONTRACTOR

Corporate Seal:

By: _____

Printed Name: _____

Title: _____

Date: _____

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

Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

TOWN ATTORNEY