

**BID FORM (EJCDC C-520)**

***NAGS HEAD BEACH NOURISHMENT PROJECT***

*[Town of Nags Head, Dare County, NC – CSE 2203-07]*

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**EJCDC STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Town of Nags Head, a North Carolina municipality ("Owner") and  
GREAT LAKES DREDGE & DOCK COMPANY, LLC ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

A. Dredging by ocean-certified hopper dredge and/or cutterhead suction dredge, placement, grading, and environmental protection as specified under federal and state permits of up to 4,600,000 cubic yards on 53,400 linear feet of Nags Head beach in four reaches identified as follows:

- 1) Reach 1 – Minimum of 1,063,500 cubic yards (Base Bid quantity) up to 1,634,700 cubic yards (Base Bid plus Alternate Bid quantity) over 29,900 linear feet (lines 491+00 to 790+00).
- 2) Reach 2 – Minimum of 886,000 cubic yards (Base Bid quantity) up to 1,366,500 cubic yards (Base Bid plus Alternate Bid quantity) over 13,000 linear feet (lines 790+00 to 920+00).
- 3) Reach 3 – Minimum of 974,000 cubic yards (Base Bid quantity) up to 1,480,000 cubic yards (Base Bid plus Alternate Bid quantity) over 9,000 linear feet (lines 920+00 to 1010+00).
- 4) Reach 4 – Minimum of 76,500 cubic yards (Base Bid quantity) up to 118,800 cubic yards (Base Bid plus Alternate Bid quantity) over 1,500 linear feet (lines 1010+00 to 1025+00).

The sand is to be dredged from two designated offshore borrow areas (#2 and #3 as illustrated on the Drawings) by hopper dredge and/or cutterhead suction dredge, pumped onto the beach, and shaped to the grades and quantities indicated on the Drawings.

B. Borrow Area #2 encompasses 320.3 acres and Borrow Area #3 encompasses 306.0 acres. The maximum depth of excavation allowed is 8.0 ft including over-dredge. The maximum area of excavation allowed is 575 acres.

C. There are no seasonal or environmental time restrictions for execution of the Work. However, dredging and placement operations will be subject to certain environmental protection measures as detailed in federal and state permits. Protection measures include open-net trawling for turtles ahead of the dredge(s) during designated periods, use of deflectors and specific equipment modification onboard hopper dredges, specific operations requirements and use of silent inspectors onboard dredges, and use of certified endangered species monitors onboard dredges. Contractor must implement protection measures as specified in federal and state permits for the project (copies of which are included in Technical Specifications 01060 Regulatory Requirements of this Project Manual). **Contractor's price to accomplish all Work is to include the cost of required environmental protection measures unless otherwise indicated in the Bid Forms.**

- D. Reach 3 (lines 920+00 to 1010+00) includes placement of dune/stockpile volume seaward of existing escarpments, emergency sand bags, and/or building foundations occurring within the designated fill template. No fill is to be placed on exposed emergency sand bags or exposed pilings, or under houses, or under exposed walkovers, or along the landward side of houses.
- E. Tilling of the beach in accordance with requirements of the Contract Documents.
- F. Restoration of access and infrastructure to conditions existing before construction.
- G. Notice to Proceed will be issued on or after **12 April 2011**.
- H. Contractor may store/stockpile equipment within Town of Nags Head limits at site(s) designated by the Owner in the event of a hiatus in construction. The cost of multiple mobilizations and demobilizations under Bid A or Bid B, if applicable, are to be included in the Contractor's price.
- I. Substantial Completion of Work under Bid A (including removal of equipment from the beach) will be by 26 November 2011. All equipment must be removed from the beach under Bid A by 12 December 2011.
- J. Partial Completion of Work under Bid B (placement of a minimum of 2,000,000 cubic yards) will be by 12 October 2011. Substantial Completion of Work under Bid B (including removal of equipment from the beach) will be by 26 July 2012. All equipment must be removed from the beach under Bid B by 12 August 2012.
- K. The order of Work is generally to accomplish the central ~32,000 linear feet (approximately lines 600+00 to 920+00) of the project area, then the northernmost ~10,900 linear feet (approximately lines 491+00 to 600+00), then the southernmost ~10,500 linear feet (approximately lines 920+00 to 1025+00). The specific boundaries of initial work will be determined based on the total quantities of fill available under the Contract in consultation with the Owner, the Engineer, and the Contractor.
- L. If there is a hiatus in construction greater than 90 days, the Contractor may be required to renourish the ends of completed sections up to 1,500 linear feet of overlap. The Owner reserves the right to revise the fill schedule following a hiatus in construction by up to 25 percent of the remaining volume originally scheduled for the reach at no penalty. Any renourished sections (overlap areas) will be paid based on surveyed volumes in place using an updated condition survey. The maximum overlap will be 3,000 linear feet (ie – 1,500 linear feet at the south end and 1,500 linear feet at the north end) of the Work Area completed prior to a hiatus in construction.

## **ARTICLE 2 – THE PROJECT**

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**NAGS HEAD BEACH NOURISHMENT PROJECT  
TOWN OF NAGS HEAD, DARE COUNTY, NORTH CAROLINA**

### ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Coastal Science & Engineering Inc (Engineer), PO Box 8056, Columbia, SC 29202, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 – CONTRACT TIMES

#### 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

#### 4.02 *Dates for Partial and Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before 26 November 2011 (under Bid A) or 26 July 2012 (under Bid B), and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before 12 December 2011 (under Bid A) or 12 August 2012 (under Bid B).
- B. The Work under Bid B (if selected by the Owner) will be partially completed (minimum of 2,000,000 cubic yards in place) by 12 October 2011.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceedings the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Ten Thousand dollars (\$10,000.00) for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment.

### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a lump sum of: \$ 30,184,000.00

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

- B. This is a lump-sum contract. Unit Prices will be used to compute progress payments and for modification of quantities in accordance with the Contract Documents.

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

- C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. The first invoice received may not exceed 60 percent of the Mobilization and Demobilization Lump Sum Bid. Furthermore, there must be evidence of mobilization prior to this payment.
- B. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 1<sup>st</sup> (first) day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
- 1) Prior to **Final** Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:
    - a) 95% of Work completed (with the balance being retainage).
    - b) NA % of cost of materials and equipment not incorporated in the Work but delivered and suitably stored in a location and manner agreed to in writing and pursuant to paragraph 14.02.A.1 of the General Conditions.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 6 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 8, inclusive).
  2. Performance bond (pages 1 to 3, inclusive).
  3. Payment bond (pages 1 to 3, inclusive).
  4. Other bonds (pages to \_\_\_\_\_, inclusive).
    - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  5. General Conditions (pages 1 to 42, inclusive).
  6. Supplementary Conditions (pages 1 to 11, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of 21 sheets with each sheet bearing the following general title:  
Town of Nags Head Beach Nourishment Project.
  9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 7, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - c. Major CAMA permit #45-10 issued 29 April 2010.
    - d. Federal permit Action ID SAW 2006-40282 issued 9 November 2010.
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed (pages 1 to 1, inclusive).
    - b. Work Change Directive(s).
    - c. Change Order(s).

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

**ARTICLE 10 – MISCELLANEOUS**

- 10.01 *Terms* – Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- 10.02 *Assignment of Contract* – No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.03 *Successors and Assigns* – Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.04 *Severability* – Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 10.05 *Contractor's Certifications*
  - A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
    - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
    - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
    - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
    - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or identified by ENGINEER on their behalf.

This Agreement will be effective on May 2, 2011 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

Town of Nags Head

GREAT LAKES DREDGE & DOCK COMPANY, LLC



[Signature]  
**Cliff Ogburn, Town Manager**

By: [Signature]  
**SAMUEL R. MORRISON**

(CORPORATE SEAL)

(CORPORATE SEAL)

[Signature]  
**Carolyn F. Morris, Town Clerk**  
Address for giving notices:

Attest: [Signature]  
**LILIA WICHERT, WITNESS**  
Address for giving notices:

P. O. Box 99

2122 YORK ROAD

Nags Head, NC 27959

OAK BROOK, ILLINOIS 60523

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. NORTH CAROLINA 61566  
(where applicable)

Agent for service of process: \_\_\_\_\_

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: SAMUEL R. MORRISON

Title: \_\_\_\_\_

Title: AREA MANAGER

Address: \_\_\_\_\_

Address: 2122 YORK ROAD

OAK BROOK, ILLINOIS 60523

Phone: \_\_\_\_\_

Phone: 630/574-2920

Facsimile: \_\_\_\_\_

Facsimile: 630/574-1515

Email: \_\_\_\_\_

Email: SRMORRISON@GLDD.COM

905

C-550

# Notice to Proceed

Date: 27 April, 2011

Project: *Nags Head Beach Nourishment*

Owner: *Town of Nags Head, Dare County, NC*

Owner's Contract No.:

Contract:

Engineer's Project No.: *2203-07*

Contractor: *Great Lakes Dredge & Dock Company, LLC*

Contractor's Address: *[send Certified Mail, Return Receipt Requested]*

*ATTN: Samuel R. Morrison*

*2122 York Road, Oak Brook, Illinois 60523*

You are notified that the Contract Times under the above Contract will commence to run on 27 April, 2011. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is 11 December, 2011, and the date of readiness for final payment is 27 December, 2011.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

Attend the pre-construction regulatory meeting, fulfill pre-dredging submittals and satisfy pre-dredging inspections as required under the permits.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Town of Nags Head**

Owner

Given by: **Cliff Ogburn, Town Manager**

*Cliff Ogburn*  
Authorized Signature

**Town of Nags Head, Town Manager**

Title

**May 2, 2011**

Date



Copy to Engineer