

**NAGS HEAD BEACH NOURISHMENT
DARE COUNTY NORTH CAROLINA**



PROJECT MANUAL

Engineer
Coastal Science & Engineering
PO Box 8056
Columbia SC 29202-8056

Owner
Town of Nags Head
PO Box 99
Nags Head NC 27959

PROJECT MANUAL
BEACH NOURISHMENT
NAGS HEAD
DARE COUNTY, NORTH CAROLINA

31 January 2011

Prepared by:

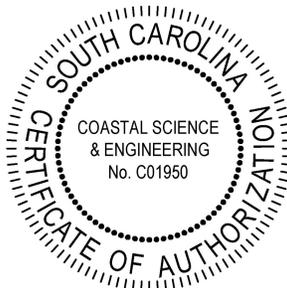
ENGINEER

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Prepared for:

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**PROJECT MANUAL
FOR
BEACH NOURISHMENT — 2011
TOWN OF NAGS HEAD, DARE COUNTY, NC**

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INSTRUCTIONS TO BIDDERS (EJCDC C-200)

NAGS HEAD BEACH NOURISHMENT PROJECT

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

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ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

- A. *Owner* – Owner is defined as the Town of Nags Head, a North Carolina municipality.
- B. *Bidder*--The individual or entity who submits a Bid directly to Owner.
- C. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- D. *Successful Bidder*--The lowest responsible Bidder submitting a responsive Bid to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office. The deposit will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within 30 days after opening of Bids.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder’s qualifications to perform the Work, within five days of Owner’s request Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below. Each Bid must contain evidence of Bidder’s qualifications to do business in the State of North Carolina or covenant to obtain such qualifications prior to award of the contract.
- 3.02 Contractors or subcontractors performing work or providing services under this contract shall comply with all current applicable standards of the North Carolina Department of Labor, Division of Occupational Safety and Health. Bidder must be prepared to submit within forty-eight hours of Engineer’s request, documentation related to the Bidder’s compliance with the current standards promulgated by the North Carolina Department of Labor, Division of Occupational Safety and Health that are applicable to the Work. At the request of the Engineer, Bidder shall submit the following:
 - A. OSHA 200 Log results for the past five years;
 - B. OSHA Citations, if any, for the past five years;
 - C. Experience Modifications Factors (Worker’s Compensation) for the past three years;
 - D. Written Safety Program, including documentation of training;
 - E. Contractor’s written drug use and alcohol misuse prevention program; and
 - F. Current Coast Guard ocean certification of each dredge listed in the Equipment List

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

- A. The Supplementary Conditions identify:
 - 1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents..
 - 2. Those drawings known to Owner of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and magnetometer survey furnished to Owner and Engineer by Tidewater Atlantic Research Inc. Two magnetic anomalies were discovered within Borrow Area #1 shown on the Drawings; Borrow Area #1 will not be used in this Project. The Contractor shall maintain a 400 feet diameter no-anchor zone centered on these two locations.
- B. A letter from NC Department of Cultural Resources indicates the possibility that remains of shipwrecked vessels may be encountered near the beach fill area. Two shipwrecks are reported to occur along the beach fill area (www.archaeology.ncdcr.gov/ncarch/underwater/huron.htm). The two wrecks that have been identified near the northern end of the beach fill area are near stationing 510+00 and 520+00 as marked on the Drawings. These areas should not be impacted by beach fill; however, if the cultural resources are observed during operations, the Contractor shall avoid the immediate area unless directed otherwise by the Engineer.

4.03 *Hazardous Environmental Condition* — Owner is not aware of any Hazardous Environmental Conditions in the borrow areas or beach-fill areas. However, no surveys have been performed to search for such conditions.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.
- B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study 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) that have been identified in Paragraph 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 the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding 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 Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01 A pre-Bid conference will be held at 2 p.m. local time on **10 February 2011** at **Fire Station 16, 5314 S Croatan Hwy, Nags Head, NC 27959**. Representatives of Owner and Engineer will be present to discuss the Project. Bidder attendance is **not** mandatory, but is encouraged. The Engineer will transmit to all prospective Bidders of record such Addenda as the Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are not applicable. (Owner is the property owner of the staging area(s). Other areas in the Project do not have permanent structures.).
- 6.02 Owner has identified public beach accesses and staging areas. Refer to the “Nourishment Fill Plan (Aerial Photo)” sheets in the Plans. Contractor is responsible for either constructing direct access, or restoring to original condition the access and streets connecting the staging areas to the beach, as applicable.

Based on observations of the beachfront by the Owner and Engineer, no dune walkovers appear to extend so far onto the beach as to hinder pipeline placement. Three piers and approximately 25 houses on pile foundations presently encroach on the active beach. The Plans and Supplementary Conditions prescribe access and protection requirements around or under these structures. The Bidder is responsible for relying on his own observations of the beach for his own Bid. After completing the nourishment work, Contractor is responsible for restoring the beach accesses, staging area(s), and any other disturbed infrastructure to original or better-than-original condition.

- 6.03 Contractor is responsible for observing easement restrictions. Owner has obtained easements (or has implemented condemnation) from all beachfront owners in the project area. The landward limit of the easement area is landward of any sand placement called for in the Plans. The easement area is the largest of the following areas:

That part of each owner’s property which: (i) visibly appears above the mean high water mark, (ii) is seaward of the last line of stable vegetation, (iii) is within the frontal sand dune, or (iv) is seaward of the crest of the erosion escarpment.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than **five (5) days** prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent (5%) of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond on the form attached issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions. Owner shall be Town of Nags Head.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within **15 days** after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the **earlier** of seven days after the Effective Date of the Agreement or 30 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in the General Conditions and may be supplemented in the General Requirements.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information

regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Engineer.
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item, alternative, and unit price item listed therein. In the case of optional alternatives the words "No Bid," "No Change," or "Not Applicable" may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 *Lump Sum*

- A. Bidders shall submit a Bid on a lump sum basis for the Base Bid and include a separate price for each Alternate described in the Bidding Documents as provided for in the Bid Form. The price for each Alternate will be the amount added to or deleted from the Base Bid if Owner selects the Alternate. In the comparison of Bids, Alternates will be applied in the same order as listed in the Bid form. Bidder shall provide a lump sum Bid for (1) mobilization and demobilization, (2) Base Quantity of work, and (3) Alternate Quantity of work for the entire project along with a unit price to be applied to (2) and (3) respectively in the project.
- B. The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.
- C. The Project will be awarded based on the lowest responsive TOTAL PRICE, including (1) mobilization and demobilization, (2) Base Quantity of work, and (3) Alternate Quantity of work selected by the Owner under the schedule deemed most favorable to the Owner.

14.02 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.03 *Allowances*

- A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

14.04 *Completion Time Comparisons*

- A. Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Article 9 above.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the **Bid Form C-410** and the **Bid Bond C-430**. The unbound copy of the Bid form is to be completed and submitted with the Bid security and the following data:
- A. C-420 Noncollusion Affidavit
 - B. C-440 List of Subcontractors
 - C. C-450 Equipment List [listing intended dredge(s)]
- 15.02 Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to the Owner.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 72 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.
- 16.03 For detailed rules governing the manner in which Owner will deal with a request for Withdrawal of Bid, Bidders are referred to North Carolina General Statute 143-129.1.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids. If Bids are received from less than three Bidders, Bids cannot be opened until after one week of re-advertisement.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within **15** days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

BID FORM (EJCDC C-410)

NAGS HEAD BEACH NOURISHMENT PROJECT

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

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

*c/o Carolyn Morris, Town Clerk
Town of Nags Head
PO Box 99, Nags Head, NC 27959*

Overnight Address:
*c/o Carolyn Morris, Town Clerk
Town of Nags Head
5401 S. Croatan Hwy, Nags Head, NC 27959*

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder 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. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder 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) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."

E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding 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 Bidder, including

applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 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;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid 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.

BID B

Base Bid B: Dredging by ocean-certified hopper dredge and/or cutterhead suction dredge, placement, grading and environmental protection as specified under federal and state permits of 3,000,000 cubic yards on 53,400 linear feet of Nags Head beach in four reaches as identified on the Project Plans. Two-thirds (2,000,000 cubic yards) of the Work must be completed by 12 October 2011 within specific boundaries centered within the project area and designated by the Engineer. Remaining Work (up to 1,000,000 cubic yards) must be completed by 12 August 2012. Contractor may store supplies and equipment within the Town of Nags Head during any hiatus in construction.

B1. Dredging and Placement Lump Sum Price _____ (\$ _____)
(use words) (figures)

B2. Mobilization and Demobilization Lump Sum Price _____ (\$ _____)
(use words) (figures)

TOTAL BASE BID B LUMP SUM PRICE (sum of items B1 & B2)

_____ (\$ _____)
(use words) (figures)

The Unit Price for Base Bid B Dredging and Placement Work (\$/cubic yard in place)

_____ (\$ _____/cy)
(use words) (figures)

Alternate Bid B: Dredging by hopper dredge and/or cutterhead suction dredge, placement, grading, and environmental protection of up to 1,600,000 cubic yards additional volume along the same four reaches of Nags Head as Base Bid B. Work will be apportioned along the project area similarly as the apportionment under the Base Bid Work Quantity more or less as shown on the Project Plans. Work to be completed by 12 August 2012. If there is a hiatus in construction greater than 90 days, Owner reserves the right to modify the fill schedule within remaining reaches. Contractor may be required to renourish up to 1,500 linear feet at each end of previously completed sections. Such renourishment along overlapping sections will be considered as new work quantities without penalty and pay volumes determined by before and after surveys.

B3. Unit Price for up to additional 1,600,000 cubic yards: \$ _____ per cubic yard

If the permitting agencies require suspension of dredging, then the Owner will grant both time extension and compensation. For such suspension of at least one day, bid the following delay costs. Suspensions of parts of a day will be pro-rated. The cost below is the total cost of suspending the Contractor's operations, regardless of the number of dredges he chooses to use.

Suspension Cost (\$/day): _____ (\$ _____)
(use words) (figures)

Apparent Low Bidder: The Apparent Low Bidder will be the lowest bidder who provides the greatest volume of Fill (Work) under the combination of Mobilization/Demobilization, Base Bid Dredging and Placement, and Alternate Dredging and Placement according to the Owner's preferred Schedule. The Owner reserves the right to select Bid A over Bid B even if the resulting volume of Fill (Work) is lower.

ARTICLE 6 – TIME OF COMPLETION

- 6.01a** Bidder agrees that the Base Bid A and Alternate Bid A (if applicable) Work will be substantially completed on or before 26 November 2011 and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before 12 December 2011.
- 6.01b** Bidder agrees that the Base Bid B and Alternate Bid B (if applicable) Work will be partially completed (minimum of 2,000,000 cubic yards) on or before 12 October 2011 and substantially completed on or before 26 July 2012. All Work under Base Bid B and Alternate Bid B will be completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before 12 August 2012.
- 6.02** Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.
- 6.03** The Contractor will be given additional time to complete the Work if delays are caused by declared natural disasters or late issuance of the Notice to Proceed in accordance with paragraph 12.03 of the General Conditions.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. C-420 Noncollusion Affidavit;
 - B. C-430 Bid Bond;
 - C. C-440 A tabulation of Subcontractors;
 - D. C-450 Equipment List;
 - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - F. *[If applicable]* Contractor's License No.: _____ *[or]* Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids; and
 - G. Required Bidder Qualification Statement with Supporting Data.

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest _____

Date of Qualification to do business in _____ *[State where Project is located]* is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

E-mail _____

SUBMITTED on _____, 2011.

State Contractor License No. _____ *[If applicable]*

NONCOLLUSION AFFIDAVIT

Each Contractor submitting a bid must fill out the following affidavit:

STATE OF _____

COUNTY OF _____

Affiant, _____ makes oath that

he is the (title) _____ of

_____ and

that the undersigned affiant has not given or donated or promised to give or donate directly or indirectly to any official or employee of the Town of Nags Head, North Carolina, or to anyone else for his benefit any sum of money or other thing of value for aid in assistance in obtaining this contract.

Subscribed and sworn to before me this _____ day of _____ 2011.

Notary Public

My Commission Expires: _____

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address):*

SURETY *(Name and Address of Principal Place of Business):*

OWNER *(Name and Address):*

BID

Bid Due Date:

Description *(Project Name and Include Location):*

BOND

Bond Number:

Date *(Not earlier than Bid due date):*

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

 Bidder's Name and Corporate Seal (Seal)

 Surety's Name and Corporate Seal (Seal)

By: _____
 Signature

By: _____
 Signature (Attach Power of Attorney)

 Print Name

 Print Name

 Title

 Title

Attest: _____
 Signature

Attest: _____
 Signature

 Title

 Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

LIST OF SUBCONTRACTORS

PROJECT: NAGS HEAD BEACH NOURISHMENT PROJECT:

TOWN OF NAGS HEAD

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to or altered without written consent of the Owner.

	SUBCONTRACTOR AND ADDRESS	CLASS OF WORK TO BE PERFORMED
1)	_____ _____	_____ _____
2)	_____ _____	_____ _____
3)	_____ _____	_____ _____
4)	_____ _____	_____ _____
5)	_____ _____	_____ _____
6)	_____ _____	_____ _____
7)	_____ _____	_____ _____

Dated _____

Bidder

BY _____

EQUIPMENT LIST

The Bidder is requested to state below the number and types of equipment proposed for use in the project.

Item	Number	Mfg / Type (Model) / Year	Capacity
Hopper Dredge	_____	_____	_____ cy
Hopper Dredge	_____	_____	_____ cy
Hopper Dredge	_____	_____	_____ cy
Hopper Dredge	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy
Other	_____	_____	_____ cy

Dated _____

_____ Bidder

BY _____

Date: _____

Project: *Nags Head Beach Nourishment*

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

Owner's Contract No.:

Contract:

Engineer's Project No.: 2203-07

Bidder:

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for _____

Dredging, placement, grading and environmental protection of 3,000,000 cubic yards of sand (Base Bid A or B) and additional _____ cubic yards of sand (Alternate Bid A or B) on 53,400 linear feet of Nags Head beach in four reaches as specified in the Contract Documents.

The Contract Price of your Contract is _____ Dollars (\$_____).

_____ copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

_____ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [_____] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Owner
By: _____
Authorized Signature

Title

Copy to Engineer

BID FORM (EJCDC C-520)

NAGS HEAD BEACH NOURISHMENT PROJECT

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

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- 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: \$ _____

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 **1st (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 _____, 2011 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By: _____

By: _____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(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. _____
(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: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Email: _____

Email: _____

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Notice to Proceed

Date: _____

Project:	
Owner:	Owner's Contract No.:
Contract:	Engineer's Project No.:
Contractor:	
Contractor's Address: <i>[send Certified Mail, Return Receipt Requested]</i>	

You are notified that the Contract Times under the above Contract will commence to run on _____. 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 _____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

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:

_____ *[add other requirements]*.

_____	Owner
_____	Given by:
_____	Authorized Signature
_____	Title
_____	Date

Copy to Engineer