



**AGREEMENT BETWEEN CLIENT AND ENGINEER  
FOR PROFESSIONAL SERVICES [2203]**

Project Name: Professional Engineering Services for Final Design, Permitting, and Construction Administration of a Large-Scale Beach Nourishment Project Along the Town of Nags Head (NC)

CSE Project No. 2203

THIS AGREEMENT is made on the \_\_\_\_ day of October 2005, by and between Town of Nags Head, hereinafter called CLIENT, and Coastal Science & Engineering Inc (CSE), hereinafter called ENGINEER.

The CLIENT and ENGINEER, for mutual consideration hereinafter set forth, agree as set forth below and as set forth in the attached standard provisions:

1.0 ENGINEER'S SERVICES: ENGINEER shall perform professional services in connection with the Project as set forth below and contained in this Agreement:

*Services provided shall be as described in the Proposal for Professional Services, Scope of Services attached as Exhibit A, dated September 2005 and made a part of this agreement herein.*

2.0 ENGINEER shall start performing services hereunder within 5 days after receipt of CLIENT'S authorization to proceed, which shall not be given later than 30 November 2005.

3.0 ENGINEER COMPENSATION:

In accordance with this Agreement, the ENGINEER shall provide professional services for which the CLIENT shall compensate ENGINEER as follows:

*Fees shall be in accordance with Exhibit A, Proposal for Professional Services, Fee Proposal dated September 2005.*

Notwithstanding anything to the contrary, ENGINEER's in-house expenses (such as miscellaneous copying, long-distance telephone/facsimile, microcomputer, word-processing equipment, normal postage) will be invoiced to CLIENT at cost not to exceed 5 percent of the total invoiced ENGINEER labor.

OTHER:

3.1 Payments will be made to the ENGINEER on a monthly basis upon presentation of an approved invoice.

4.0 SPECIAL PROVISIONS:

4.1 The Agreement shall be governed by the laws of the State of North Carolina.

4.2 During the term of this Agreement, ENGINEER agrees to provide evidence of workmen's compensation insurance coverage where applicable and comprehensive general liability insurance coverage.

4.3 During the term of this Agreement, ENGINEER agrees to provide evidence of professional liability insurance with a limit of at least \$250,000 for each claim and an annual aggregate of at least \$1,000,000.



- 4.4 The CLIENT acknowledges and understands the potential risks with engineering and construction activities, and agrees to allocate risk in proportion to the ENGINEER'S fees for the project. The CLIENT therefore agrees, to the extent authorized by law, to limit the ENGINEER'S liability to the CLIENT and to all contractors and subcontractors on the project, due to any claim of any nature whatsoever arising out of or relating to the performance of professional services under this agreement, such that the total aggregate liability of the ENGINEER shall not exceed the ENGINEER'S fee for labor on the project.
- 4.5 ENGINEER is not responsible for the identifying, discovering, removal and/or treatment (remediation) of any hazardous waste, known or unknown at the site, nor for the consequences of any hazardous waste materials of any kind at the site, including, but not limited to asbestos and PCB's, as well as materials not yet known as hazardous.
- 4.6 Any notices required to be given under this Agreement may be given by enclosing the same in a sealed envelope, postage prepaid, addressed to the CLIENT at Town of Nags Head, PO Box 99, Nags Head, NC 27959, and to the ENGINEER at PO Box 1643, Morehead City, NC 28557 and by depositing same with the U.S. Postal Service. When so given, such notice shall be given from the time of mailing the same.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

ENGINEER: Coastal Science & Engineering  
 PO Box 1643, Morehead City NC 28557

BY: \_\_\_\_\_  
 TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ WITNESS: \_\_\_\_\_

ATTEST TOWN OF NAGS HEAD

\_\_\_\_\_  
 Clerk to Board Town Manager

ATTEST

\_\_\_\_\_  
 Secretary

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

APPROVED AS TO FORM & LEGALITY

\_\_\_\_\_  
 Finance Director Town Attorney

APPROVED AS TO CONTENT

\_\_\_\_\_  
 Department Representative



## STANDARD PROVISIONS

### 1.0 CLIENT 'S RESPONSIBILITY:

The CLIENT shall, unless otherwise provided for in this agreement, at no cost to the ENGINEER:

- 1.1 Furnish to the ENGINEER all reasonable survey and property description data requested by the ENGINEER for the Project.
- 1.2 Guarantee full and free access for the ENGINEER to enter upon all property for the performance of the ENGINEER'S services.
- 1.3 Furnish to the ENGINEER all existing studies, reports and other available data and services of others pertinent to the Scope of Services, and obtain additional reports and data as required; and ENGINEER shall be entitled to rely on such information and services in performance of services hereunder.
- 1.4 Give prompt written notice to the ENGINEER whenever the CLIENT observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER'S performance of services under this Agreement.

### 2.0 PAYMENTS TO THE ENGINEER:

- 2.1 Progress payments shall be made in proportion to the services rendered and as indicated within this Agreement and shall be due and owing upon the ENGINEER'S submittal of any invoice.
- 2.2 No deductions shall be made from the ENGINEER'S compensation on account of penalty or other sums withheld from payment to Contractors.
- 2.3 Hourly rates and reimbursable expenses shall be subject to periodic revision. In the event revisions are made during the lifetime of this Agreement, the increased or decreased hourly rates and Reimbursable Expenses shall apply to all remaining compensation for services performed by the ENGINEER where such rates provide the basis for the ENGINEER'S compensation.
- 2.4 Reimbursable expenses are in addition to ENGINEER'S compensation for services performed on an hourly basis and include expenditures made by the ENGINEER, his employees or his consultant(s) in the interest of the project.
- 2.5 If the Project is delayed or if the ENGINEER'S services on the project are delayed or suspended for more than three months for reasons beyond the ENGINEER'S control, the ENGINEER may, after giving seven days written notice to the CLIENT, terminate this Agreement and the CLIENT shall compensate the ENGINEER in accordance with the termination provision contained hereinafter in this Agreement.
- 2.6 If the CLIENT fails to make payments when due or otherwise is in breach of this agreement, the ENGINEER may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The ENGINEER shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment in full by the



CLIENT, the ENGINEER shall resume services under this agreement, the time schedule and compensation adjusted for the period of suspension plus any other reasonable time and expenses necessary for the ENGINEER to resume performance.

### 3.0 GENERAL PROVISIONS:

- 3.1 All drawings, Specifications, computer data, and other work data of the ENGINEER for this Project are instruments of service for this Project only and shall be the property of the CLIENT whether the Project is completed or not. The CLIENT shall not reuse any of the ENGINEER'S instruments of service on extensions of this Project or on any other project without the written permission of the ENGINEER. Any unauthorized reuse shall be at the CLIENT'S risk and the CLIENT agrees to hold harmless the ENGINEER from all claims, damages, and expenses arising out of such unauthorized reuse of the ENGINEER'S instruments of service by the CLIENT or by others acting through the CLIENT.
- 3.2 Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without prior written consent of the other party. 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 this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent associates and consultants as ENGINEER may deem appropriate to assist in the performance of the services hereunder.
- 3.3 This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed to the termination notice date including Reimbursable Expenses due.
- 3.4 This Agreement represents the entire and integrated agreement between the ENGINEER and CLIENT and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both the CLIENT and the ENGINEER.
- 3.5 In an effort to resolve any conflicts that arise during performance of services, the CLIENT and ENGINEER agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The CLIENT and ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, suppliers or fabricators so retained, thereby providing for mediation as the primary method of dispute resolution between parties to those agreements.
- 3.6 Should litigation occur between the two parties relating to the provisions of this Agreement, all reasonable litigation expenses, witness fees, and court costs incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.
- 3.7 Neither party shall hold the other responsible for damages caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.



- 3.8 In the event any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding on the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 3.9 The ENGINEER is not responsible for design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the Contractor to perform his work. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary detainment of excavations, and any erection methods and temporary bracing.
- 4.0 The ENGINEER intends to render his services under this agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either expressed or implied.
- 4.1 Any estimate of construction costs prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the CLIENT. Since the ENGINEER has no control over the cost of labor and materials, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such estimates as compared to Contractors bids or actual cost to the CLIENT.

The ENGINEER's federal identification number is 57-0784511.