

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **Town of North Topsail Beach** (“Owner”) and **Atlantic On-Site Development, LLC** (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

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:

Drainage improvements to New River Inlet Road & the North Topsail Beach Town Park utilizing a level spreader with vegetated filter strip, and permeable pavers, including but not limited to:

- Level spreader with vegetated filter strip installation
- 12” RCP pipe installation
- Stormwater traffic bearing drop inlet and type D drop inlet installation
- Shallow swale installation
- Permeable paver installation
- Traffic Control
- Erosion Control

Drainage improvements to Gray Street and Island Drive utilizing an infiltration chamber, including but not limited to:

- Erosion Control
- Stormwater Management Underground Infiltration System
- 15” RCP pipe installation
- 4” PVC Force main pipe installation
- Stormwater traffic bearing drop inlet and manhole installation
- Sand separator and pump station installation
- Traffic Control
- Erosion Control
- Electrical controls & panel

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **NTB Flooding Improvements Project**.

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **W.K. Dickson & Co., LLC**. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by “**Engineer**”.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is 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 Not used.

4.03 *Contract Times: Days*

- A. The Work for the site will be substantially complete within 150 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 180 days after the date when the Contract Times commence to run.

4.04 Not used.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, 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):
1. *Substantial Completion*: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor the Contract Price for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (Established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ITEM NO.	SPEC NO.	ITEM DESCRIPTION	SCHEDULED QUANTITY			UNIT	UNIT PRICE (\$)	TOTAL AMOUNT (\$)
			Gray Street	New River Inlet Rd	Total QTY			
1	017113	Mobilization (5% of Total Cost)	-	-	1	LS	\$52,220.00	\$52,220.00
2	008000	Traffic Control (2.5% of Total Cost)	-	-	1	LS	\$26,110.00	\$26,110.00
3	014000	Allowance (Independent Firm, Geotechnical Engineer to perform Testing and Inspection Services)	-	-	1	LS	\$5,000.00	\$5,000.00
4	311000	Clearing and Grubbing (Including shrub removal)	-	-	1	LS	\$2,500.00	\$2,500.00
5	321413.2	Remove Asphalt Pavement and Replace with Permeable Pavers (Includes removal & proper disposal of asphalt pavement, pavers, stone, geotextile fabric, PVC Liner, observation wells, coordination, testing, subdrain pipes, etc.)	-	1750	1750	SY	\$232.00	\$406,000.00
6	24119	Remove Asphalt Pavement	324	210	534	SY	\$40.25	\$21,493.50
7	321123	Remove & Replace Gravel Driveway	42	-	42	SY	\$70.00	\$2,940.00
8	321313	Remove and Replace Concrete Driveway	14	-	14	SY	\$195.00	\$2,730.00
9	321216	ABC Stone	113	76	189	TON	\$52.50	\$9,922.50
10	321216	Asphalt Intermediate Base Course, Type I19.0C	101	-	101	TON	\$415.31	\$41,946.31
11	321216	Asphalt Base Course, Type B25.0C	-	40	40	TON	\$623.28	\$24,931.20
12	321216	Asphalt Surface Course, Type S-9.5C	39	30	69	TON	\$345.00	\$23,805.00

13	SP-1	Furnish and Install Stormwater Management Underground Infiltration System (Storage Units, Stone, Geotextiles, Grading, Testing, soil removal, inflow manifold and discharge piping, viewports and concrete collar, etc.)	2112	-	2112	SF	\$25.00	\$52,800.00
14	334100	15" RCP Class III Storm Drain Pipe	564	-	564	LF	\$157.00	\$88,548.00
15	334100	12" RCP Class V Storm Drain Pipe	-	235	235	LF	\$157.00	\$36,895.00
16	334100	15" RCP Class V Storm Drain Pipe	50	-	50	LF	\$157.00	\$7,850.00
17	SP-5	Furnish and Install Level Spreader (Concrete Level spreader, Blind swale, Vegetated filter strip, Transition RipRap Class B, Geotextiles, Grading, Testing, soil removal, etc)	-	1	1	LS	\$15,300.00	\$15,300.00
18	334100	4" RJ PVC Force Main	40	-	40	LF	\$45.00	\$1,800.00
19	334234	Traffic Bearing Grated Drop Inlet (Per NCDOT 840.35)	3	1	4	EA	\$5,400.00	\$21,600.00
20	334234	Concrete grated Drop Inlet Type D (Per NCDOT 840.19)	-	1	1	EA	\$7,780.00	\$7,780.00
21	333213 / electric Specs	Pre-Cast sand separator and stormwater pump station, concrete fill, Electric Equipment, Ground Rod, Light Fixture, Pumps, Check Valve, platforms, grounding wires, Testing, etc.	1	-	1	LS	\$225,503.00	\$225,503.00
22	312513	Permanent Storm Drain Inlet Filter Protection	3	1	4	EA	\$450.00	\$1,800.00
23	312200	Grading	-	1	1	LS	\$9,500.00	\$9,500.00
24	221113	Water Service lines Replacement	200	65	265	LF	\$20.00	\$5,300.00
25	312513	Silt Fence	1110	777	1887	LF	\$4.50	\$8,491.50
26	312513	Standard Tree Protection Fence	-	300	300	LF	\$4.00	\$1,200.00
27	312513	Site Stabilization (Temporary)	1	1	2	EA	\$3,500.00	\$7,000.00
28	329219	Permanent Seeding	863	625	1488	SY	\$3.00	\$4,464.00
29	312513	Temporary Inlet Protection	3	1	4	EA	\$350.00	\$1,400.00
30	SP-2	Concrete Washout	1	1	2	EA	\$450.00	\$900.00
31	SP-3	Utility Coordination	-	-	1	LS	\$5,000.00	\$5,000.00
Total Bid Price for Site (Total of all Unit Price Bids)								\$1,122,730.01

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment as soon as is reasonably possible and according to the Owner's policies and procedures for the payment of invoices during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner, include a Certified Sales Tax Affidavit, and otherwise meet the requirements of the Contract.

The aforementioned sentence and its associated requirements shall replace and/or supersede the requirements of Paragraph 15.01(D) of the General Conditions. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

1. Prior to Substantial 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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of the value of the Work completed and materials and equipment stored on site (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage;
 - 2) Except that the value of materials stored on site shall not exceed 20% of the Contractor's gross Project invoices for purposes of determining the 50% completion threshold; and
 - 3) The Owner may reinstate retainage up to the amount of 5% on subsequent pay applications if either of the two following conditions exists:
 - a. Contractor's performance becomes unsatisfactory; or
 - b. It is necessary in order to hold 2.5% total retainage.
- B. Within 60 days of submission of a pay application and one of the following events: i) issuance of a certificate of Substantial Completion, or (ii) beneficial use and occupancy by the Owner, Owner shall, with written consent of the Surety, release the retainage, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 250 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- C. *Early Finishing Trades.* Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contract by or before the Project is fifty percent (50%) complete if the Contractor has performed

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g trades is contingent upon the Owner's receipt of an approval or certification from the architect or applicable engineer that

the work performed by the subcontractor is acceptable and in accordance with the Contract Documents. At that time, the Owner shall reduce the retainage for such trades to five-tenths percent (0.5%) of the Contract. Payments under this subsection shall be made no later than 60 days following receipt of the subcontractor's request or immediately upon receipt of the surety's consent, whichever occurs later. Early finishing trades under this subsection shall include structural steel, piling, caisson, and demolition.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment or return or release retainage at any time, unless Contractor submits written consent of the Surety to such payment, return, or release.

6.05 *Interest*

A. All amounts not paid pursuant to Paragraph 6.02(A) above will bear interest at the rate of 1 percent per month.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications, Special Provisions, and Additional Documents as listed in the table of contents of the project manual (not attached but incorporated by reference)
6. Drawings (not attached but incorporated by reference) consisting of **30** sheets with each sheet bearing the following general title: **NTB Flooding Improvements Project**.
7. Addenda (numbers **1 to 2**, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.

d. Field Orders.

- e. Warranty Bond.
- B. There are no Contract Documents other than those listed above in this Article 7.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 - 6. Contractor has considered the information known to Contractor itself; 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
 - 8. 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.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *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 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything 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.
- B. Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81. It is the responsibility of Contractor to monitor compliance with this restriction.
- C. As a condition of payment under this agreement, Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes to the extent legally applicable. Further, if Contractor provides services to the Town utilizing a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes to the extent legally applicable. Contractor shall verify, by affidavit, compliance with the terms of this section upon request by the Town.
- D. Contractor certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. § 147-86.60) It is the responsibility of each vendor or contractor to monitor compliance with this restriction.

8.03 *Standard General Conditions*

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract).

Owner: Town of North Topsail Beach

Contractor:

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

2008 Loggerhead Ct

North Topsail Beach, NC 28460

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

License No.: _____
(where applicable)

State: _____

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

By: _____
Finance Officer

Date: _____

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