

**ADDENDUM NO. 4**  
TO  
**CONTRACT DOCUMENTS**  
FOR  
**POST-FLORENCE RENOURISHMENT PROJECT – PHASE 1**  
**TOWNS OF EMERALD ISLE AND INDIAN BEACH**  
**CARTERET COUNTY, NORTH CAROLINA**

**TOWNS OF EMERALD ISLE AND INDIAN BEACH**

**14 November 2018**

**General**

1. This Addendum shall supplement, amend, and become part of the Bid Documents. All Bids and the Construction Contract shall be based on these modifications.
2. Bidders shall acknowledge the receipt of this addendum on their Bid Form.

**Specific**

The following revisions should be noted at the appropriate part of the Contract Documents and made a part thereof:

I. **Plans**

- a. None

II. **Specifications**

- a. FRONT END; SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT:  
There was an error in the Addendum No. 3 where the revisions from Addendum No. 1 were not included.
- b. FRONT END; SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT;  
PAGE 5 of 10 SC-13.07: Add the following new paragraph immediately after paragraph General Conditions 13.07.E:

F. Contractor's obligations under this Paragraph 13.07 for the correction period shall not apply to beach fill. After acceptance by the CE of a beach fill section the Contractor will have no further guarantees or warranty responsibility for the accepted section of beach. However, the Contractor will still be responsible for to removal of all pipe and the knocking down of escarpments for final acceptance of the project. The warranty for dune plantings is covered within Technical Specifications Section 02923 – Dune Planting.

**Replace original or modified Supplementary Conditions of the Construction Contract with those attached as part of this addendum.**

- c. TECHNICAL SPECIFICATIONS; SECTION 01005 – SPECIAL WORK REQUIREMENTS AND RESTRICTIONS; PAGE 10, PARAGRAPH 1.4.5.d: Replace the first sentence with the following:

The proposed dredging window (16 November – 30 April) will coincide with periods of low sea turtle abundance.

**Replace original Technical Specification Section 01005 – Special Work Requirements and Restrictions with that attached as part of this addendum.**

Questions Submitted By Bidders:

The Contract Documents state if Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. Please confirm whether any such work is scheduled or anticipated. **No additional work is anticipated at this time. If the project budget and scheduling allows, additional material may be placed within the project limits.**

Please modify the liquidated damages provisions at Section 4.03 of the Sample Form of Agreement between Owner and Contractor to be consistent with the Standard General Conditions at Section 12.03. If Contractor is delayed by force majeure events and/or severe weather or other causes beyond the control and without the fault of Contractor, Contractor should not be assessed liquidated damages and should be entitled to an equitable adjustment in the Contract Time and/or Contract Price. If the Contractor is entitled to an extension of time beyond the time specified for completion in the Contract for unavoidable delays, and Owner is unable to obtain an extension of the time in the project permits, Contractor should be released from its obligations to perform. **No modifications to the liquidated damages provisions will be made at this time. All potential bidders are instructed to bid the project with these provisions in place.**

Please confirm whether this project is federally assisted; that is whether it is funded in whole or in part by the federal government. If so, please identify any domestic product preference requirements (i.e. Buy America). **At this time the project is being funded using local funds. However, the Owner is pursuing a FEMA reimbursement claim for this project due to losses from Hurricane Florence. All current requirements for the use of Federal funds including but not limited to, the Buy American Act shall be followed for this project.**

Please confirm Contractor is solely responsible for damage to known utilities and will not be responsible for damage to utilities not shown on the plans and specifications or identified by the North Carolina 811 utility locator service. **This understanding is correct, however this does not alleviate the Contractor from taking reasonable care when working in potential areas of utilities.**

Unlike land-based construction, completed dredging activities are subject to natural forces that are entirely outside the control of the Contractor. To clarify the intent of the warranty and the correction period, please include the following warranty provision: “Upon Contractor’s advising Owner that the dredging has been completed, Owner shall inspect the Work and, if acceptable, shall advise Contractor of Owner’s acceptance thereof. Contractor in no way represents, guarantees or warrants that any dredging or excavation will stay open, dredged or excavated for any period of time whatsoever.” **Please see above for response and the revised Supplementary Conditions of the Construction Contract.**

Technical Specification Section 02881 Section 1.4. entitled “Character of Materials” refers to Contractor’s understanding of the “conditions” and states Contractor may encounter cobbles and other minor debris. To be clear, cobble is not identified as a condition that should be anticipated by Contractor in this paragraph or any other paragraph. Therefore, if cobble is found to exist within the pipeline alignment for excavation, then that would constitute a differing site condition. Please confirm that the Owner is in agreement with this statement and please revise this paragraph accordingly to reduce contingencies in Contractor bids. **The Owner is making the contractor aware that they may encounter cobbles or minor debris although it is not anticipated. The permitted borrow area is of sufficient size and quantity that the contractor, if cobbles or minor debris are encountered, should alter their operation to move to a location within the permitted borrow area where compatible beachfill material can be obtained.**

**End of Addendum No. 4**

# SUPPLEMENTARY GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

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SC-1.01            *Defined Terms*

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01.A.29      *Owner*

Owner is defined as the Town of Emerald Isle and the Town of Indian Beach, both North Carolina municipalities, for their respective contracts.

SC-1.01.A.44      *Substantial Completion*

Substantial Completion will be deemed to have been reached once the contract quantities included in the Base Bid or any awarded Alternates have been placed, graded, tilled (if required), and equipment has been removed from the beach, as confirmed by Engineer. Demobilization may be completed after Substantial Completion, but before Final Payment.

SC-2.05.A            *Preliminary Schedules*

Replace paragraph 2.05.A with the following:

A. Within ten (10) days after the Effective Date of the Agreement, Contractor shall submit to Engineer a preliminary schedule, detailing the Contractor's plans for completing the project within the times identified in the Bid Form. Engineer and Owner require five (5) business days to examine, comment on, and return the preliminary schedule to the Contractor. Any delays in the project, which are the result of delays in Contractor delivering a preliminary schedule showing completion of the work within the times prescribed, will be the sole responsibility of the Contractor and will be considered Avoidable Delays. Owner reserves the right to withhold Notice to Proceed until such schedule has been delivered and examined.

SC-4.01.B            *Availability of Lands*

As Owner is a municipality and not subject to mechanic's liens, replace paragraph B with:

B. Owner has obtained perpetual easements of construction and maintenance of the nourished beach. Upon reasonable written request, Owner shall furnish Contractor with a current list of beachfront property owners and easements, but Owner will not be performing a title search.

SC-4.02            *Subsurface or Physical Conditions*

A. Owner has completed multiple studies of subsurface or physical conditions. See Appendices A and B.

Replace paragraph 5.04.B.4 with:

- 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until advance notice is given to the insured and Owner, a minimum of the lesser of, thirty (30) days prior notice or the minimum notice period in compliance with any applicable state or other laws governing such terms (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

Add the following new paragraph immediately after paragraph 5.04.B:

C. The limits of liability for the insurance required by General Conditions 5.04 shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers’ Compensation, and related coverages under General Conditions 5.04.A.1 and A.2:	
a. State	Statutory
b. Applicable Federal (eg, Jones Act, Longshoreman’s and Harbor Workers)	\$2,000,000
c. Employer’s Liability	\$2,000,000
2. Contractor’s General Liability under General Conditions 5.04.A.3 through A.6 which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:	
a. General Aggregate	\$5,000,000
b. Products – Completed Operations Aggregate	\$5,000,000
c. Personal and Advertising Injury \$ 2,000,000	\$2,000,000
d. Each Occurrence (Bodily Injury and Property Damage)	\$2,000,000
e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable	
f. Excess or Umbrella Liability (This coverage is not in addition to the limits in other coverages. Any combination that provides \$2,000,000 coverage per individual and \$5,000,000 in aggregate will fulfill this condition.)	
1) General Aggregate	\$5,000,000
2) Each Occurrence	\$2,000,000

3. Automobile Liability under General Conditions 5.04.A.6:	
a. Bodily Injury: Each person	\$1,000,000
Each Accident	\$2,000,000
b. Property Damage: Each Accident	\$500,000
Watercraft Liability under General Conditions 5.04.A.6:	
a. Bodily Injury: Each person	\$1,000,000
Each Accident	\$2,000,000
b. Property Damage: Each Accident	\$2,000,000
4. The Contractual Liability coverage required by General Conditions 5.04.B.3 shall provide coverage for not less than the following amounts:	
Each Accident	\$2,000,000
Annual Aggregate	\$5,000,000

SC-6.02.B *Labor; Working Hours*

Replace paragraph 6.02.B with:

B. Owner will not be responsible for Contractor's overtime, holiday pay, or weekend pay. Contractor agrees to hold Owner harmless from any and all violations of state or federal labor laws caused directly or indirectly by Contractor's actions in performance of this Contract and further agrees to indemnify Owner for any fines, penalties, fees or other monies assessed against Owner for such violations.

SC-6.06 *Concerning Subcontractors, Suppliers, and Others*

This provision shall be added to paragraph General Conditions 6.06.B:

North Carolina GS 143-128.2 establishes a ten percent (10%) goal for participation of Minority Businesses in the total value of the work. Responsive bids must include appropriate affidavits.

SC-6.08 *Permits*

Replace paragraph 6.08.A with:

A. Owner has obtained a draft North Carolina CAMA Major Permit and the U.S. Army Corps of Engineers Permit for this project as well as a lease (pending) from the Bureau of Ocean and Energy Management (BOEM) to utilize the borrow site which required a Biological Opinion from National Marine Fisheries Service (NMFS). Contractor is required to abide by the permit conditions as well as conditions listed in the Technical Specifications. See Appendix D.

B. Additional Special Conditions resulting from other regulatory requirements are listed in the Technical Specifications.

SC-6.12 *Record Documents*

Contractor shall provide hard and/or digital copies of all quality control reports and After-Dredging Survey data.

In addition to the documents listed in General Conditions 6.12 that Contractor is required to keep available at the work site, Contractor must have available, during all hours the Contractor is working, copies of the NC CAMA and USACE permits, BOEM Authorizations, NMFS Biological Opinion and USACE construction placard for inspection by Owner, Engineer, and permitting agencies.

SC-7.04 *Claims Between Contractors*

This provision is added immediately after General Conditions 7.03:

A. Should Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultants, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineer's Consultants or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.



SC-8.09                    *Limitations on Owner's Responsibilities*

Add the following new paragraphs immediately after paragraph General Conditions 8.09.A:

B. *Personal Liability.* No officer or agent of the Owner or Engineer, while acting within the scope of his/her authority, shall be subject to any personal liability or accountability by reason of his/her execution of this Contract or any other documents related to the transactions contemplated hereby. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities.

C. *Owner's Site Representative.* The Owner's Site Representative or his designee shall reserve the right to periodically audit the Contractor's job site(s) to ensure compliance with applicable safety regulations, rules, and standards. The Owner's Site Representative shall reserve the right to stop the work, if a hazardous situation is observed that, in the opinion of the Representative, is immediately dangerous to life or health. The job shall remain closed until such time as the unsafe condition is corrected to the satisfaction of the Representative. In all cases, the Representative shall make every effort to contact the Contractor's designated safety representative. The Representative does not have to allow a condition to persist in order to satisfy any requirement to contact the Contractor's designated safety representative. No additional compensation shall be added to the Contract Price, and the Owner shall not be liable for any expenses or damages incurred by the Contractor as a result of stopping work to correct a condition that is immediately dangerous to life or health. No additional time shall be added to the Contract Time as a result of stopping work by the Owner's Site Representative to correct a condition that is immediately dangerous to life or health.

SC-11.03                    *Unit Price Work*

This is a lump-sum contract. Adjustment of the unit price according to conditions listed in General Conditions 11.03 will be considered only if the Base Bid volume is changed by more than 20% percent.

SC-13.07                    *Correction Period*

Add the following new paragraph immediately after paragraph General Conditions 13.07.E:

F. Contractor's obligations under this Paragraph 13.07 for the correction period shall not apply to beach fill. After acceptance by the CE of a beach fill section the Contractor will have no further guarantees or warranty responsibility for the accepted section of beach. However, the Contractor will still be responsible for removal of all pipe and the knocking down of escarpments for final acceptance of the project. The warranty for dune plantings is covered within Technical Specifications Section 02923 – Dune Planting.

SC-14.02.A                    *Applications for Payments*

Add the following new paragraph immediately after paragraph General Conditions 14.02.A.3:

4. Documentation that must accompany Applications for Payments is detailed in Sections 01270 and 02882 of the Technical Specifications.

SC-14.02.B *Review of Applications*

Replace paragraph General Conditions 14.02.B.1 with the following:

Applications for Payment are due to the Engineer by the 25th day of each month that they are claimed. A total of 35 days is required for review by Engineer and Owner, as well as reimbursement from FEMA, for payment by the 1st. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

SC-14.02.C.1 *Payment Becomes Due*

Replace paragraph General Conditions 14.02.C.1 with the following:

1. On the first of the month following the Application for Payment to Owner with Engineer's recommendation (approximately 35 days), the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

SC-15.03 *Owner May Terminate for Convenience*

Add the following paragraphs after paragraph General Conditions 15.03B:

C. National Marine Fisheries Service (NMFS) has provided an allotment of turtle and sturgeon takes for this project as well as conditions for takes concerning relocation of turtles and sturgeon. If after these takes consultation with NMFS results in cancellation of the project, this project will be Terminated for Convenience.

SC-15.04 *Contractor May Stop Work or Terminate*

Replace paragraph General Conditions 15.04.A and B with the following:

- B. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 65 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- C. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 65 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

SC-16            *DISPUTE RESOLUTION*

Add the following new paragraph immediately after paragraph General Conditions 16.01:

SC-16.02            *Mediation*

A. Owner and Contractor agree that they shall first make a good faith effort to resolve any issues which may arise between the parties during regarding this Agreement and the business relationship created thereby and to submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation prior to either of them seeking recourse by legal process. The above notwithstanding, nothing shall limit the right of any party to this Agreement: (1) to seek judicial equitable relief, or other equitable relief available to it under applicable statutory and/or case law including, but not limited to, injunctive relief and the appointment of a receiver; or (2) to exercise any self-help rights or any other rights or remedies available to it by contract or applicable statutory or case law (including but not limited to the filing of an involuntary petition in bankruptcy, the right of set off, attachment, recoupment, foreclosure, or repossession) with respect to its extension of credit, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any negotiation or mediation proceeding. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies or exercise of self help remedies, all as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to submit a dispute to negotiation and mediation, including disputes that may arise from the exercise of such rights. The costs of the mediation, including the fees and expenses of the mediator, shall be borne by the parties to the mediation in equal shares, each party to this agreement bearing the expense of its own counsel, experts, witnesses, and preparation and presentations at the mediation. The mediation process is non-binding and shall conform with the following rules and procedures:

1. **Request for Mediation.** When a dispute between the parties is not resolved by informal negotiations, any party shall serve upon the other(s) a request for mediation which shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. Upon service of the request for mediation, the parties shall have ten (10) days to select a mediator.

**2. The Mediator.** The parties shall select a mediator from a list of eastern North Carolina Certified Mediators. The mediator must remain neutral and impartial in all aspects of the mediation. The mediator will control the procedural aspects of the mediation. The parties agree to cooperate fully with the mediator throughout the proceeding. During the mediation, the mediator is free to meet and communicate separately with each party or groupings of parties. The mediator will not transmit information which has been disclosed to him or her in confidence by any party to another party without the former party's express authorization. The mediator may freely express his or her views to the parties on the legal issues of the dispute, however, each party, shall rely exclusively on its own counsel for legal representation and advice. The mediator shall be compensated by payment of a one-time administrative fee and an hourly rate which represents the mediator's standard rates for such services and as agreed upon by the parties with the mediator. Each party shall bear an equal share of the mediator's compensation.

**3. Pre Mediation Submissions.** Prior to the date that mediation is scheduled to begin, each party shall cooperate with each other in exchanging all documents that are relevant to the dispute and in permitting reasonable review of each other's contract files. Not later than ten (10) days prior to mediation, each party will send to the mediator with copies to each other, the following documents: a) all documents that are relevant to the dispute (parties will cooperate in selecting documents to avoid duplication between the submissions of each party); b) a list of the issues to be determined (the parties will make every effort to submit a joint list of issues in the order that is most logical for presentation); c) a list of witnesses and participants in the mediation proceeding. Within the same time frame, any party may submit to the mediator a written brief of not more than 15 typewritten pages (Times New Roman, 12 pitch), outlining the nature of and basis for its claims and its principal defenses to the claims of others. Each brief will include an analysis by each party of the cause or causes of the damages or other harm based on evidence presently available to it, including the opinions of its own personnel and any independent experts. Each party must send copies of its brief to all other participants in the mediation simultaneously with its submission to the mediator. The mediator may request any party to provide clarification and additional information prior to and during the mediation and may request any party's attorney to brief legal issues.

**4. Mediation Conference.** Once the mediator has familiarized himself or herself with the case, the mediator will mediate settlement discussions between and among the representatives of the parties. In addition to party counsel (if any), each party must be represented at the mediation by a person authorized to conclude a settlement of the dispute on behalf of that party, or in the case of a governmental entity, by a person who has authority to negotiate for and make recommendations to the governing board subject to such board's approval. Each representative must participate in the mediation process in good faith toward the settlement of all issues. Each party will notify the mediator of its designated representatives prior to the mediation. The mediation will be conducted at any location selected by the mediator which will facilitate the joint and individual meetings involved in the mediation and otherwise accommodate the needs of the representatives of the parties and the mediator. The mediation process will be conducted expeditiously and privately. Each representative (and counsel, if any) will be available for meetings throughout the entire time period set aside for the mediation. Other persons may attend only with the permission of the parties and with the consent of the mediator. The mediator will decide when to meet or confer separately with each party or parties and when to hold joint meetings. There shall be no stenographic record of the mediation process. The mediator will fix the time and place of each session and the agenda in consultation with the parties. The mediator may assist the parties in arriving at a settlement in such ways as he or she deems advisable and proper under the circumstances. Efforts to reach a settlement will continue until a settlement is reached or when the mediator concludes and informs the parties that further effort would not be useful. Continuation will be on terms and conditions to which the parties agree. The mediation proceeding will begin with each party making an opening statement of no longer than fifteen minutes. The first statement will be made by the proponent of the major elements of the dispute. Following opening statements, each issue will be discussed using a round table discussion technique. Each party will make its relevant key employees and consultants available to participate in this discussion. In the discussion, the proponent of the issue will make a brief presentation of its position on the issue. The other party will then make a brief presentation of its defense. The mediator will then moderate a discussion – calling on participants from each side as they request to address the issues in question. There will be no side discussions and no participant will speak until called on by the mediator. The goal of this discussion is to fully develop all information relevant to the determination of the facts of the dispute and the precise position of each party. All participants will refrain from statements that are unduly argumentative or contentious. The proceedings will not be recorded and witnesses will not be sworn. However, all participants will be expected to be forthright in their statements and to be fully open and honest in their dealings with each other. Attorneys may participate in the discussion and may call on other personnel when necessary to ensure that they contribute their knowledge to the discussion. Attorneys will not cross-examine witnesses of the other party. Following the round table discussions, each party may summarize its position in a statement no longer than one-half hour. The parties may, by mutual agreement, waive these statements. Following the summarizations, if any, the parties and mediator will meet to negotiate a settlement that is fair to both parties. The parties may conduct these discussions with or without the mediator. The mediator may present his views on any issues or propose resolution of one or more of the issues in dispute. Either party or the mediator may request a private, confidential meeting with the mediator to discuss possible settlement positions, and the mediator will not reveal any confidential information to the other party, unless authorized to do so. Either party may adjourn the meeting at any time to caucus with his team, but all parties will endeavor to keep the negotiations active

until a settlement has been reached. The entire mediation process is confidential. No record of the proceedings, electronic or otherwise, will be made. The parties and the mediator will not disclose information regarding the process, including settlement terms, to third parties, unless otherwise agreed. The process will be treated as a compromise and settlement negotiation for purposes of federal and state Rules of Evidence, and in no case may any conversation or communication originating during the mediation process, whether written or oral, be used as evidence in a court of law. The mediator is disqualified as a witness, consultant, or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not parties to the mediation.

5. **Settlement.** If a settlement is reached, the mediator, or counsel for one of the parties at the mediator's request, will draft a written settlement document incorporating all settlement terms. This draft will be circulated among the parties, edited as necessary, and, if acceptable, formally executed. A consent judgment or one or more voluntary dismissals shall be filed with the Court in which any proceedings have been brought before or during mediation as stipulated in the settlement agreement reached by the parties.

## SECTION 01005

### SPECIAL WORK REQUIREMENTS AND RESTRICTIONS

#### PART 1 GENERAL

##### 1.1 REFERENCES

The publications listed below form a part of the specification to the extent referenced. The publications are referenced in the text by basic designation only.

##### U.S. ARMY CORPS OF ENGINEERS (USACE)

ER 1-1-11	(2017) Progress, Schedules, and Network Analysis Systems
EM 385-1-1	(2014) Safety and Health Requirements Manual
EM 1110-2-1003	(2013) Hydrographic Surveying Manual; Change 1 2004
EM 1110-1-1003	(2011) Navstar Global Positioning System Surveying

##### 1.2 SUBMITTALS

Submit the following to the Engineer (CE) in accordance with Section 01330, "SUBMITTAL PROCEDURES":

Pre-construction Submittals;

U.S. Coast Guard Certificates of Inspection for plant (per paragraph 1.11)

Data required for diving operations (per paragraph 1.16.6)

Execution;

Sea turtle trawling reports (if trawling is required); Endangered species reporting forms and data, as required in this Section

##### 1.3 SPECIAL WORK REQUIREMENTS

The work under this contract consists of dredging beach quality sands from the permitted area of the Morehead City Ocean Dredged Material Disposal Site (ODMDS) and placing, shaping and grading the sand fill material along beach segments (Reaches) within the Towns of Emerald Isle and Indian Beach as shown in the plans. The Contractor shall perform the scheduled work with one or more appropriate hopper dredge(s) and transport the material to a pump out buoy or

series of pump out buoys to be provided by the Contractor. The material shall then be carried from the pump out buoy or buoys to the beach by hydraulic means through a submerged pipeline and deposited within the designated beach placement area segments as indicated and specified.

#### 1.3.1 Order of Work

The Contractor shall perform all required beach fill placement operations in a continuous and orderly manner. Prior to the start of work, the Contractor shall submit a proposed plan for beach fill operations to the Engineer (CE) for approval. The project shall be completed generally from east to west by reach.

#### 1.3.2 Borrow Site

The Contractor's attention is called to Appendix A "Archaeological Remote Sensing and Target Identification Study by Mid-Atlantic Technology and Environmental Research, Inc", that concludes the borrow site includes modern debris (wire rope, pipe, etc.) that appears to be related to either the present-day ODMDS or artificial reef systems created in the 1970s. No submerged cultural resources or historic artifacts were found. In the event the Contractor encounters such material (cultural resources or historic artifacts) in the active area of dredging in the ODMDS or in the vicinity of the pump-out operations, the Contractor shall stop work immediately within 305 m (1000 ft) of the area of discovery and notify the CE, the NCDCCR Underwater Archaeology Branch (960) 458-9043, and Mr. James F. Bennett, Chief, Division of Environmental Assessment, BOEM, at (703) 787-1660. If investigations determine that the resource is significant, the parties shall together determine how best to protect it.

#### 1.3.3 Access to Work Site

The beach Reaches within Emerald Isle and Indian Beach are served by an all-weather surfaced road network. The Contractor's equipment and vehicular access into the work area will be available from multiple streets as shown in the plans. Staging areas for equipment lay down are also as shown in the plans. Access to and egress from the work area are the responsibility of the Contractor and are subject to permit approvals received. The Contractor will be allowed to access Reach 3 from the beach access provided within Reach 2. All roads approved for the Contractor's use shall be maintained throughout construction and restored to as good condition as existed prior to their use. The Contractor shall keep all roads free of mud and other foreign materials resulting from his operations. All temporary construction shall be removed and the affected area restored to its original condition. All costs for the use of existing transportation facilities, for the construction of temporary facilities, and for maintenance, repair, removal and restoration shall be borne by the Contractor.

#### 1.3.4 Beach Material Placement

The Contractor shall construct the public beach to the lines and grades as indicated in the plans and according to Section 02882 BEACH FILL unless the CE directs otherwise. Any damage to the public beach by the Contractor's operations during material placement operations on private property shall be repaired to match the existing conditions, at the expense of the Contractor. If the Contractor discovers any previously unknown historic or archeological resources while accomplishing activity onshore, the Contractor will notify the Owner and BOEM of any finding. The Owner will initiate the Federal and State coordination required to determine if the remains



warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places, and appropriate action for the resolution of adverse effects.

1.3.5 General Restrictions on Excavation and Placement of Material

No excavation, dredging, or beach construction shall occur from 1 May to 15 November of any year. All excavation, dredging, and placements shall take place only within areas identified in the plans.

1.4 ENVIRONMENTAL PERMIT WORK REQUIREMENTS

1.4.1 General Information

This section supplements the Contractor's responsibility under the Permits shown in Appendix D to the extent that the Owner has already obtained an environmental permit for the required borrow area dredging. In addition, the borrow area is a location where sea turtles, whales, and other endangered and threatened species may be encountered during the work.

The Contractor is advised that the Owner has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of dredging on threatened and endangered species in the borrow area for this contract. To protect these species, NMFS has issued a Biological Opinion and Incidental Take Statement – see Appendix D.

**Incidental Take Statement over the 50-Year Life of the Project**

Species	Lethal Take	Non-lethal Take
Green sea turtle (NA and SA DPSs combined)	6 total (3 observed; all hopper dredging)	0
Kemp's ridley sea turtle	8 total (4 observed; all hopper dredging)	0
Loggerhead sea turtle (NWA DPS)	46 total (24 observed; 23 hopper dredging, 1 relocation trawl)	30 (all relocation trawling)
Atlantic sturgeon (All 5 DPSs combined)	22 total (11 observed; all hopper dredging)	847 (all relocation trawling)

For this project, take limits were estimated based on the ratio of dredging volume for this project versus the 50-yr total dredging volume. **The following table is not meant to state what the allowable limit for this project is, but it is meant to determine when additional measures may be required.**

### Estimated Incidental Take Statement for Current Project

Species	Lethal Take	Non-lethal Take
Green sea turtle (NA and SA DPSs combined)	0	0
Kemp's ridley sea turtle	0	0
Loggerhead sea turtle (NWA DPS)	2 total (1 observed)	2 (all relocation trawling)
Atlantic sturgeon (All 5 DPSs combined)	1 total	30 (all relocation trawling)

Trained and experienced personnel knowledgeable in threatened and endangered species/marine mammal observations and reporting standards are required to be on the dredge at all times. In the event of an endangered species inspectors' determination of a potential incident, dredging will cease, appropriate contacts made and remedial steps taken before operations are resumed. Refer to additional details in Section 02881 DREDGING.

The contract plans and specifications have been prepared to comply with the environmental permits and the Biological Opinion and Incidental Take Statement that was established during the planning and development of this project. These special environmental requirements are an outgrowth of environmental commitments made by the Owner during the project development and all dredging, transport and placement of dredged material under this contract shall be in strict compliance with the conditions set forth in the agreements that are included as a part of this contract, the specifications, and the Appendices. The Contractor is advised that any deviations from the construction methods and procedures indicated by the plans and specifications that are not prior approved in writing by the CE, or any non-compliance with or violation of the conditions stated in the agreements and permit noted herein, shall be cause for the CE issuing a stop work order.

Any stop work orders issued for any of these causes will not be subject to time extensions or cost recovery by the Contractor. Any non-compliance with or violation of the conditions stated in the agreements noted herein may result in criminal and civil penalties against the Contractor.

#### 1.4.1.1 Endangered Species Act (ESA) Compliance with NMFS Biological Opinion and Incidental Take Statement/Recommendations

BOEM is the lead agency on behalf of the Federal Government to ensure the Project complies with all terms, conditions and recommendations of the NMFS Biological Opinion. For all activities undertaken pursuant to the Project, the Contractor agrees to implement all terms, conditions and recommendations in the NMFS Biological Opinion, which are incorporated by reference as terms and conditions of the Lease (see Appendix D; to the extent the extracts or the Lease differ from or conflict with the Biological Opinion, the Biological Opinion governs). The Contractor will instruct its subcontractor(s) to implement those mitigation terms, conditions, and measures required or recommended by NMFS in the Biological Opinion. In the event that the USACE is not able to provide the required inspection of the turtle deflector equipment, the Owner will notify BOEM prior to conducting the activity and the Contractor will be required to provide a NMFS-approved third party contractor to perform the inspection. In addition to any reporting requirements or recommendations in the Biological Opinion, copies of all relevant correspondence, monitoring, and reporting must be provided to BOEM within 14 days of

issuance at dredgeinfo@boem.gov. The Contractor agrees to respond to all reasonable requests from and cooperate with BOEM and NMFS in meeting their obligations under the ESA.

In the case of any collision with or injury of a threatened or endangered species, including but not limited to sea turtles, the Contractor must stop all dredging operations and immediately contact the NMFS's Protected Resources Division (727-824-5312, fax 727-824-5309, or electronic mail [takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov)), the local authorized sea turtle stranding/rescue organization (currently the North Carolina Wildlife Resources Commission, but an up-to-date list is provided online at <http://www.sefsc.noaa.gov/species/turtles/strandings.htm>) and BOEM (dredgeinfo@boem.gov and 703-787-1215).

In addition to any terms and conditions, harm and avoidance measures, and reasonable and prudent measures specified in the NMFS Biological Opinion to protect threatened or endangered species, the Owner has agreed to the following requirements by BOEM to protect sea turtles.

- a. The USACE and BOEM will have measures in place to monitor and report all interactions with any protected species resulting from the proposed action.
- b. Relocation trawling will be employed when water temperatures exceed 57 degrees F (13.8 degrees C) beginning 24 hours prior to hopper dredging. Regardless of water temperature, if 1 sea turtle or sturgeon species is taken by a hopper dredge, trawlers will mobilize within 24 hours and 24-hour trawling will commence. If a second sea turtle or sturgeon species is taken during the 24-hour mobilization period, dredging will cease until relocation trawling can begin. The applicant may choose to employ relocation trawling prior to meeting the temperature or take trigger; however, voluntary relocation trawling does not change the number of allowable take in this Opinion.
- c. The USACE and BOEM shall implement best management practices, including the use sea turtle deflector dragheads, intake, and overflow screening to reduce the risk of injury or mortality of listed species and lessen the number of sea turtles killed by the proposed action.
- d. The USACE and BOEM will require NMFS-approved observers to monitor dredged material inflow and overflow screening baskets on the hopper dredge.

#### 1.4.1.2 Environmental Compliance

BOEM must ensure that the project complies with applicable environmental laws, including but not limited to ESA, MSA, NHPA, and CZMA. The Contractor agrees to include in its Plan and implement all proposed avoidance and minimization measures identified in the NMFS Biological Opinion and the USACE and NCDPCM Permit Conditions. To minimize the severity of benthic impact, the Contractor shall leave undisturbed space between the dredge cuts to allow the relatively intact benthic communities between the furrows to be a source of colonists to adjacent disturbed areas.

The Owner is responsible for compliance with all Federal and State permits related to the Project, including but not limited to the Specific Conditions of the State CAMA and Water Quality Permits, which require among other things implementation of sediment compatibility and compaction monitoring, marine turtle conditions, marine mammal special conditions, and

seasonal construction windows. Construction will not commence until the pre-construction requirements have been completed. Additionally, the Owner will require its Contractor(s) to implement the mitigation terms, conditions, and measures required by NMFS, U.S. Fish and Wildlife Service, North Carolina Division of Coastal Management, North Carolina Division of Water Quality, the USACE, and BOEM, as appropriate, pursuant to applicable Federal and State laws and regulations. In addition to the requirements identified in this Lease, required mitigation terms, conditions, and measures are reflected in the Biological Opinion (summarized in Appendix D) and Conservation Recommendations. Construction may not commence until the preconstruction requirements have been completed. Copies of all relevant correspondence, monitoring, and reporting must be provided to BOEM within fourteen (14) days of issuance at dredgeinfo@boem.gov (including but not limited to observer and dredge reports).

The Owner acknowledges and agrees that, even where it is otherwise in compliance with the terms and conditions of this Lease and other required authorizations, incidental take of sea turtles or other endangered species by the Owner or its authorized contractors, within federal waters, may require suspension of the Lease by BOEM and reinitiation of consultation with NMFS. The amount and severity of incidental take that will trigger suspension, and the need for any such suspension or reinitiated consultation, will be determined in the sole discretion of BOEM. Depending on the results of an assessment of the take or reinitiated consultation, BOEM in its sole discretion may reinstate the Lease, revoke and terminate the Lease, negotiate with the Owner an amendment to the existing Lease or enter into a new lease with additional terms and conditions to protect threatened or endangered species. The Owner and the Contractor understands and agrees on behalf of itself, its agents, contractors, and other representatives, that no claim, legal action in equity for damages, adjustment, or other entitlement against BOEM will arise as a result of any suspension or related action.

#### 4. Pre- Construction Notification of Activity in or near the Borrow Area

Prior to the commencement of construction, the Contractor will provide a summary of the construction schedule. The Contractor and Owner, at the reasonable request of BOEM or the Bureau of Safety and Environmental Enforcement (BSEE), will allow access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and will provide BOEM or BSEE any documents and records that are pertinent to occupational or public health, safety, or environmental protection as may be requested.

The Owner will invite BOEM to attend a pre-construction meeting that describes the Owner and/or its agents' plan and schedule to construct the Project.

The Owner, after receiving notification from its Contractor(s), will notify BOEM at dredgeinfo@boem.gov within 72 hours prior to the commencement of and no later than 24 hours after termination of operations at the ODMDS. BOEM will notify the Owner in a timely manner of any OCS activity within the jurisdiction of the DOI that may adversely affect the Owner's ability to use OCS sand for the Project.

##### 1.4.2 Trawling and Relocation (For Hopper Dredges Only)

###### 1.4.2.1 Trawling and Relocation

Agreements with environmental agencies may require sea turtle/sturgeon relocation trawling during the project depending on the number of takes that occur. The results of each trawl shall be recorded on Sea Turtle/Sturgeon Trawling Reports. A final report shall be prepared after the

completion of all trawling efforts. Both reports shall be submitted in hard copy and electronic format to the CE, and shall summarize the results of the trawling (with all forms and including total trawling times, number of trawls and number of captures). Any turtles/sturgeon captured during the survey shall be measured in accordance with standard biological sampling procedures with sampling data recorded on Sea Turtle/Sturgeon Relocation Reports. Based on the Biological Opinion and subsequent discussions with BOEM and NMFS, the County has agreed to the following requirements by BOEM to protect sea turtles.

#### 1.4.2.2 Relocation Trawling Procedures

Trawling and relocation procedures and equipment shall comply and be conducted in accordance with the NMFS Biological Opinion. Methods and equipment shall be standardized including data sheets, nets, trawling direction to tide, length of station, length of tow, and number of tows per station. Data on each tow shall be recorded using the appropriate report. The trawler shall be equipped with two 60-foot nets constructed from 8-inch mesh (stretch) fitted with mud rollers and flats as specified in the Biological Opinion. Paired net tows shall be made for 10 to 12 hours per day or night. Trawling shall be conducted with the tidal flow using repetitive 15 to 30 minute (total time) tows in the dredge area. Trawl speeds shall not exceed 3.5 knots. Tows shall be made such that the total width of the borrow area bottom is sampled. Positions at the beginning and end of each tow shall be determined from GPS positioning equipment. Tow speed shall be recorded at the approximate midpoint of each tow. Refer to USACE EM 1110-1-1003, paragraph 5.3 and Table 5-1, for acceptable GPS criteria. Additional conditions can be found below in 1.4.5.

#### 1.4.2.3 Water Quality and Physical Measurements

Water temperature measurements shall be taken at the water surface each day using a laboratory thermometer. Weather conditions shall be recorded from visual observations and instruments on the trawler. Weather conditions, air temperature, wind velocity and direction, sea state-wave height, and precipitation shall be recorded on the Sea Turtle Trawling Report. High and low tides shall be recorded.

#### 1.4.2.4 Approved Trawling Supervisor

Trawling shall be conducted under the supervision of a biologist approved by the NMFS. A letter of approval from NMFS shall be provided to the CE prior to commencement of trawling. At least one (1) crewmember who is a National Oceanic and Atmospheric Administration (NOAA) fisheries-approved observer or NMFS approved biologist shall be on board the trawler during the trawl and act as the sea turtle trawling and relocation supervisor.

#### 1.4.2.5 Report Submission

In order to monitor turtle interactions, all interactions must be reported within 24 hours to: [takereport.nmfs@noaa.gov](mailto:takereport.nmfs@noaa.gov) and must reference this opinion by date issued, title, and NMFS Public Consultation Tracking System identifier number.

Following completion of the project, a copy of the Contractor's log regarding sea turtles shall be forwarded to the CE within 10 working days.

#### 1.4.2.6 Trawling Permits

The Contractor shall be responsible for obtaining authorization related to trawling from the National Marine Fisheries Service (NMFS).

#### 1.4.2.7 Endangered Species Reporting Requirements

In addition to reports specified elsewhere, complete and submit the following Forms when applicable:

- Sturgeon Incidental Take Data Form
- Endangered Species Observer Program, Large Whale Observation Data

#### 1.4.2.8 Payment for Relocation Trawling

Trawling is not expected to be required unless a turtle or sturgeon take occurs or if water temperatures are greater than 57°F (13.8°C). If trawling is required during these months, payment will be made using the daily rate specified in the Bid.

#### 1.4.3 Special Precautions for Sea Turtles on the Beach

Routine Beach Surveillance will be conducted during construction (16 November – April 30) to prevent unintentional damage to sea turtles and their nesting areas. If a nest or a turtle crawl is identified in the project area, the Contractor will stop all beach disposal activities and contact the USACE Wilmington District (Attn: Mickey Sugg (910) 251-4811) to determine appropriate action.

The Contractor shall be aware that the nesting season for sea turtles within the beach fill area is 1 May through 15 November. During this period, a qualified turtle monitor approved by the U. S. Fish and Wildlife Service shall be employed by the Contractor at his expense to monitor for stranded turtles, turtle trails, turtle nesting activity, and be currently licensed and permitted in accordance with U. S. Fish and Wildlife requirements to relocate turtles and nests if needed.

This person shall visually survey by 9:00 am each morning for the presence of turtles and turtle nests along the high tide line in one direction, along the tide line in the opposite direction, and a thorough visual inspection in the entire projected beach fill area that the Contractor intends to work that day.

When the Contractor performs beach fill placement operations at night, inspections shall be performed as described above by the approved turtle monitor every two hours. The approved turtle monitor shall remain on-call 24 hours a day during this period and be at the project site within 2 hours of any incident notification to them of a stranded turtle or turtle nest discovery.

If a turtle nest is dug up by beach construction activities or found by any other means in the area where the Contractor's activities may disturb the nest, the Contractor must stop all activities in the area and protect the discovery until the approved turtle monitor is notified and on the scene. Turtles and turtle nests shall only be moved or otherwise be disturbed by the turtle monitor approved by the U. S. Fish and Wildlife Service. The turtle monitor must prepare an Incident Statement on approved forms for all findings, recording the contract number and title, date and time of discoveries, location and condition of findings, and provide a copy to the Contractor as directed. The turtle monitor shall at the same time forward a signed copy of the Incident

Statement within 24 hours to the U. S. Fish and Wildlife Service, Ecological Services Field Office (attention: Kathy Matthews), 551 Pylon Drive, Suite F, Raleigh, NC 27606, phone 919-856-4520; and the and the National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division (attention: Dana Bathea), 263 13<sup>th</sup> Avenue South, St. Petersburg, Florida 33701, phone 727-824-5312. The Contractor shall acknowledge the time and date of his receipt of the Incident Statement in his Daily Report of Operations and include a copy in his Daily Report to the CE.

#### 1.4.4 Sea Turtle and Smalltooth Sawfish Construction Conditions

The Contractor will comply with the following protected species construction conditions:

- a. The Contractor will instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The Contractor will advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers will be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project will operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions will be implemented to ensure its protection. These precautions will include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment will cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish will be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation (Biological Opinion).

#### 1.4.5 Harm and Avoidance Measures

- a. Dredges will operate at speeds of two to three knots during dredging operations. During transit between the borrow area and pump-out sites, dredges will adhere to a speed limit of ten knots or less.
- b. During daylight hours (dawn to dusk), one NMFS-approved endangered species observer with at sea large whale identification experience will be onboard the dredge to conduct observations for large whales. If a right whale is sighted within 500 yards during dredging operations, operations will cease until the observers are confident that the whale has left the area. If a whale is sighted during transit, the crew will reduce speed and alter course as necessary to maintain a distance of 500 yards between the vessel and the whale. All whale sightings will be documented and reported to NMFS.
- c. All beach fill material will comply with the State of North Carolina Technical Standards for Beach Fill Projects (15A NCAC 07H .0312). The Technical Standards require the characterization of sediments from the recipient beach and the proposed borrow sites. Sediment characteristics that are considered include percent weight of fine-grained sediment, percent weight of granular sediment, percent weight of gravel, and percent weight of calcium carbonate. Results of the characterization studies are submitted to the North Carolina Division of Coastal Management (NCDCM), which ultimately determines the suitability of sediments from the proposed, borrow site. Daily monitoring of beach nourishment activities will be conducted to further ensure the compatibility of the beach fill material. Visual monitoring of the fill material would be conducted at the dredge pipe outfall before it is redistributed along the beach. If any incompatible fill material is detected, the contractor will cease operations and immediately contact the USACE Wilmington District Regulatory Branch and NCDCM to determine the appropriate course of corrective action (Per NC CAMA Permit 86-12).
- d. The proposed dredging window (16 November – 30 April) will coincide with periods of low sea turtle abundance. As previously described, multiple studies have shown that sea turtles avoid waters where sea surface temperatures are below 11°C. The presence of sea turtles in nearshore and inshore waters is generally restricted to the months of April through December. Adherence to the proposed window will reduce the likelihood of incidental take during dredging operations.
- e. The use of the rigid draghead deflector is required during all hopper dredging operations. All dredging contracts require the proper installation and operation of the rigid draghead deflector.
- f. Dredging contracts require 100 percent inflow screening. NMFS-approved endangered species observers will provide 100 percent (24 hours/day) monitoring of inflow screens, dragheads, and hoppers. During active dredging when dragheads are submerged, NMFS-approved endangered species observers will continuously monitor (24 hours) the inflow screening for sturgeon, turtles and/or parts of these animals. At the completion of each load cycle, dragheads will physically be inspected as they are lifted from the sea surface and placed on the saddle to account for sturgeon or sea turtles that may be impinged within the draghead. The dredge contractor will install lighting sufficient to illuminate the screens and draghead during nighttime hours. Endangered species observers will work in 12- or 24-hour shifts, such that one observer will be onboard the dredge at all times.



g. In addition to monitoring inflow screening, dragheads, and hoppers: during daylight hours the endangered species observer will survey for the presence of endangered species during transit to and from the work zones.

h. The Silent Inspector (now called the Dredging Quality Management data (DQM)) automated dredge monitoring system is required on all hopper dredges. Data generated by the Silent Inspector (DQM) will be used to monitor contractor compliance with hopper dredge operating requirements, including proper operation of the draghead.

i. Relocation trawling will be conducted from November 16 through December 31 and March 1 through March 31, following the take of one sea turtle or sturgeon species.

NMFS has determined that the following reasonable and prudent measures must be implemented :

1. The USACE and BOEM will have measures in place to monitor and report all interactions with any protected species resulting from the proposed action.
2. Relocation trawling will be employed when water temperatures exceed 57 degrees F (13.8 degrees C) beginning 24 hours prior to hopper dredging. Regardless of water temperature, if 1 sea turtle or sturgeon species is taken by a hopper dredge, trawlers will mobilize within 24 hours and 24-hour trawling will commence. If a second sea turtle or sturgeon species is taken during the 24-hour mobilization period, dredging will cease until relocation trawling can begin. The applicant may choose to employ relocation trawling prior to meeting the temperature or take trigger; however, voluntary relocation trawling does not change the number of allowable take in this Opinion.
3. The USACE and BOEM shall implement best management practices, including the use sea turtle deflector dragheads, intake, and overflow screening to reduce the risk of injury or mortality of listed species and lessen the number of sea turtles killed by the proposed action.
4. The USACE and BOEM will require NMFS-approved observers to monitor dredged material inflow and overflow screening baskets on the hopper dredge.

The following terms and conditions implement the Reasonable and Prudent Measures (RPM):

In order to be exempt from the prohibitions of Section 9 of the ESA, the USACE, BOEM, and/or the County are required to comply with the T&Cs that implement the RPMs. The following T&Cs are nondiscretionary. The USACE and BOEM shall condition the County to require the following terms and conditions to minimize the effects of take on green sea turtle, Kemps' ridley sea turtle, loggerhead sea turtle, and Atlantic sturgeon:

1. An annual project report summarizing the results of the dredging, the relocation trawling (if any), and the take (if any) must be submitted to NMFS within 30 working days of completion of that year's activities (RPM 1).
  - a. Annual reports shall contain information on project location, start-up and completion dates, cubic yards of material dredged, problems encountered, incidental takes (include photographs, if available), sightings of protected

species, mitigating actions taken (if relocation trawling, the total number of tows, location of capture/release, and number and species of turtles and sturgeon relocated), screening type (inflow, overflow) utilized, daily water temperatures, name of dredge, names of endangered species observers, percent observer coverage, and any other information the USACE, BOEM, and/or contractor deems relevant. This report must reference the present Opinion by NMFS identifier number (SER-2017-18882), title (Bogue Banks Master Beach Nourishment Plan), and issuance date, and be provided to NMFS's Protected Resources Division at: [takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov).

- b. Information regarding all USACE hopper dredging and relocation trawling contained in the annual report will be uploaded to the USACE's Operations and Dredging Endangered Species System (ODESS).
2. Due to the longevity of the proposed action, the USACE and BOEM shall notify NMFS when 75% of any of the species take limits in Table 21 (i.e., observed lethal or non-lethal) are reached to discuss whether reinitiation might be necessary.
  3. The USACE and BOEM project manager shall notify the STSSN state representative (contact information available at <http://www.sefsc.noaa.gov/seaturtleSTSSN.jsp>) of the start-up and completion of hopper dredging operations and ask to be notified of any sea turtle or sturgeon stranding in the project area that, in the estimation of the STSSN personnel, bear signs of potential draghead impingement or entrainment. Information on any such stranding shall be reported in writing within 30 working days of completion of that year's activities to NMFS's Southeast Regional Office (address provided in RPM No. 1 above), or included in the project report (RPM 1).
  4. If/when relocation trawling is triggered, all non-lethal relocation trawl take reports shall be submitted to NMFS weekly at: [takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov). All lethal take reports shall be submitted within 24 hours (RPM 2) to the same address. These reports shall reference the present Opinion by NMFS identifier number (SER-2017-18882), title (Bogue Banks Master Beach Nourishment Plan), and issuance date.
  5. The following conditions must be observed during relocation trawling (RPM 2, following minimization measure 3.1.4f):
    - a. Trawl Time. Trawl tow-time duration shall not exceed 42 minutes (doors in-doors out) and trawl speeds shall not exceed 3.5 kn.
    - b. Handling During Trawling. Sea turtles captured pursuant to relocation trawling shall be handled in a manner designed to ensure their safety and viability by implementing the measures below. See Appendix 2: Requirements for Handling Incidentally Taken Sturgeon and Collecting Genetic Samples for sturgeon-specific conditions. Use Appendix 3: Sturgeon Genetic Sample Submission Sheet when recording data for any sturgeon capture via relocation trawling.
      - i. Holding Conditions. Captured sea turtles shall be kept moist, and shaded whenever possible, until they are released. They may be held for up to 24 hours if opportunistic, ancillary, "piggy-back" data gathering (e.g., opportunistic satellite tagging) is proposed. This Opinion provides the

authority to NMFS-approved observers to satellite tag captured sea turtles.

- ii. Measurements, Sampling, and Tagging. This Opinion serves as the permitting authority for any NMFS-approved endangered species observers aboard relocation trawlers or hopper dredge to weigh, measure, collect a tissue sample, and tag captured sea turtles and sturgeon without the need for an ESA Section 10 permit. Only NMFS-approved observers or observer candidates in training under the direct supervision of a NMFS-approved observer shall conduct the measuring/weighing/tissue sampling/tagging operations.
  1. Measurements. All sea turtles shall be measured (standard carapace measurements including body depth) and weighed prior to release when safely possible.
  2. Tissue Sampling. All sea turtles captured by relocation trawling shall be tissue-sampled prior to release, according to the protocols described in the October 29, 1997, SARBO, as revised through Revision No. 2. Tissue samples shall be sent within 60 days of capture to: NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, Attn: Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. All data collected shall be submitted in electronic format within 60 working days to Lisa Belskis at the following email address: Lisa.Belskis@noaa.gov. A copy of the Protected Species Incidental Take Form should accompany the sample.
  3. Tagging. All sea turtles captured by relocation trawling shall be flipper-tagged prior to release with external tags that shall be obtained prior to the project from the University of Florida's Archie Carr Center for Sea Turtle Research. Columbus crabs or other organisms living on external sea turtle surfaces may also be sampled and removed under this authority. All sea turtles captured by relocation trawling or dredges shall be thoroughly scanned for the presence of passive integrated transponder (PIT) tags prior to release using a scanner powerful enough to read dual frequencies (125 and 134 kilohertz) and read tags deeply embedded deep in muscle tissue (e.g., manufactured by Biomark or Avid). Sea turtles which have been previously PIT tagged shall nevertheless be externally flipper-tagged. PIT-tagging may only be conducted by observers with PIT-tagging training or experience. The data collected (PIT-tag scan data and external tagging data) shall be submitted to NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, Attn: Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. All data collected shall be submitted in electronic format within 60 working days to Lisa Belskis at the following email address: Lisa.Belskis@noaa.gov. All data generated and samples collected by relocation trawlers shall also be submitted to the Cooperative Marine Turtle Tagging Program (CMTTP), on the

appropriate CMTTP form, at the University of Florida's Archie Carr Center for Sea Turtle Research.

- iii. Take and Release Time During Trawling. Sea turtles shall be kept no longer than 24 hours prior to release and shall be released not less than 3 nmi from the dredge site. Recaptured turtles shall be released not less than 5 nmi away and shall be released over the side of the vessel, away from the propeller, and only after ensuring that the vessel's propeller is in the neutral, or disengaged, position (i.e., not rotating). If it can be done safely, turtles may be transferred onto another vessel for transport to the release area to enable the relocation trawler to keep sweeping the dredge site without interruption.
- iv. Injuries and Incidental Take Quota. Any protected species injured or killed in federal or state waters during or as a consequence of relocation trawling shall count toward the incidental take quota. Minor skin abrasions resulting from trawl capture are considered non-injurious. Injured sea turtles shall be immediately transported by Carteret County or its contractor at its own expense to the nearest sea turtle rehabilitation facility; all rehabilitation costs and sea turtle transportation costs shall be borne by Carteret County or its contractor. If it is determined that the turtle cannot be released, NMFS and the rehabilitation facility will determine the best course of action along with a cost estimate for continued care.

6. For the proposed action, 100% shipboard observer monitoring of inflow screens is required year-round. If conditions disallow 100% inflow screening, inflow screening can be reduced gradually. But effective, 100% overflow screening is then required, and an explanation must be included in the annual project report, and NMFS notified beforehand.

If the dredge is not using UXO screening, then the hopper's inflow screens should initially have 4-in by 4-in screening, for effective screening and capture of entrained protected species body parts. NMFS believes this is workable for sand mining operations where a minimum of debris is expected to be encountered. However, if the USACE or BOEM, in consultation with observers and the draghead operator, determine that the draghead is clogging and reducing production substantially, the mesh size may be increased after prior consultation with and approval by NMFS, to 8-in by 8-in; if this still clogs, then 16-in by 16-in openings. NMFS believes that this flexible, graduated-screen option is prudent since the need to constantly clear the inflow screens will increase the time it takes to complete the project; therefore, it will increase the exposure of sea turtles and sturgeon to the risk of impingement or entrainment. Inflow screen clogging should be greatly reduced with these flexible options; however, further clogging (e.g., as when encountering heavy clay or debris) may compel removal of the inflow screening altogether, in which case effective 100% overflow screening is mandatory.

The USACE and BOEM shall notify and get approval from NMFS beforehand if inflow screening is going to be reduced or eliminated, and provide details of how effective overflow screening will be achieved. NMFS, in consultation with the dredging company, the USACE, and BOEM, shall determine what constitutes effective overflow screening (RPM 3).

7. The USACE and BOEM will require the use of rigid sea turtle deflectors on all hopper dragheads. The hopper dredge's sea turtle deflector draghead is to be inspected prior to startup of hopper dredging operations. In addition, the USACE and BOEM shall ensure that all contracted personnel involved in operating hopper dredges receive thorough training on measures of dredge operation that will minimize sea turtle and sturgeon take (RPM 3, following minimization measure 3.1.4e).
8. The USACE and BOEM shall arrange for NMFS-approved protected species observers to be aboard the hopper dredge to monitor the hopper bin, screening, and dragheads for sea turtles, sturgeon, and their remains. For the proposed action, 100% observer monitoring is required. Beach observers cannot be used in place of shipboard observers for hopper dredging of borrow areas (RPM 4, following minimization measure 3.1.4d).
9. The USACE and BOEM shall arrange for NMFS-approved protected species observers to maintain watch on the bridge of all hopper dredges and relocation trawlers for protected species and keep a logbook noting the date, time, location, species, number of animals, distance and bearing from dredge, direction of travel, and other information, for all sightings when the dredge vessel is transiting (following minimization measure 3.1.4d). NMFS-protected species observer sighting reports shall be included in the annual project summary report (T&C 1).

Other RPM are included within the trawling discussion (1.4.2.2) and within the BOEM lease in Appendix D.

## 1.5 SECURITY AND PUBLIC SAFETY OF WORK AREAS

The beach fill placement area is accessible to the general public; however, the Owner will not undertake to exclude the public or restrict public access to the site during the work. The Contractor shall fully comply with the provisions of OSHA safe working practices and requirements of these specifications. The Contractor shall employ the use of signs, barricades, barriers, flagmen, and any other devices and measures required to assure public and worker safety at the beach fill placement areas at all times. Unless directed otherwise, the Contractor may perform the scheduled work 24 hours a day, 7 days a week.

All lighting associated with the project shall be limited to the immediate area of active construction only. Such lighting shall be shielded, low-pressure sodium vapor lights directed to the maximum extent practical towards the ocean to minimize illumination of the beach and landward areas. Red filters shall be placed over vehicle headlights of the Contractor's plant and equipment used on the beach. Lighting on offshore equipment shall be similarly minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid excessive illumination of the water.

## 1.6 NOISE CONTROL AND ABATEMENT

The Contractor shall employ the use of properly installed and maintained mufflers, silencers, and manufacturer's recommended sound suppressors on all plant, machinery, and equipment used on this work. The use of sound signals such as whistles, horns, or bells shall not be used if two-way radio communication can accomplish the required function. The Contractor shall not use sound signals, with the exception of those signals required for vessel operations by the U.S. Coast Guard, during the time between sunset and sunrise. During the time between 10:00pm

and 6:00am, the Contractor shall plan and schedule his work operations to minimize noise of alarms from the backward operations of plant and equipment in the beach fill area. Accordingly, the Contractor shall operate plant in a forward mode and limit beach fill operations in the vicinity of the housing areas to the maximum extent practical during this time period. The Contractor shall anticipate that work which generates noise and requires lighting, such as welding, power generators, drills and similar activities, will only be allowed during daylight hours except in cases of emergencies. If it becomes necessary to schedule noise or light producing work during the restricted hours in the area, the Contractor shall include the proposed activity in his Work Plan and obtain written permission from the CE at least 48 hours in advance of accomplishing the proposed work.

## 1.7 COORDINATION BETWEEN CONTRACTORS

During the period of this contract, other contracts may be in force for the construction of other features of work on or adjacent to the site of work being accomplished under this contract. The Contractor shall arrange his plant, and shall schedule and perform this work, so as to effectively cooperate with all other contractors and agencies. It shall be the responsibility of the Contractor on this contract to be fully informed of the extent of the limits of work to be performed by other contractors. Specifically, there shall not be any interference with USACE Maintenance dredging activities in the vicinity of the project. Should there be any conflict between these limits, the Contractor shall immediately notify the CE of the conflict, and the CE's decision shall be final.

## 1.8 NOTIFICATION OF BEACH FILL OPERATIONS

The Contractor shall maintain a current register of planned beach fill operations indicating where the beach fill operations will be on a given day, including street locations for the beach fill operations and the pump out facility, and their daily projected locations along the beach fill placement area for the duration of the contract. The register shall be updated daily and provided with the Daily Report of Operations in a format approved by the CE for ready release to the public.

## 1.9 PHYSICAL DATA

### 1.9.1 Physical Conditions Information

The physical conditions indicated on the drawings and described in the specifications are the result of site investigations and surveys. Information and data furnished or referred to below is furnished for the Contractor's information; however, it is expressly understood that the Owner will not be responsible for any interpretation or conclusion drawn from this information or data by the Contractor.

### 1.9.2 Weather Conditions Information

Complete weather forecasts, records and reports may be obtained from the National Weather Service weather forecast office in Newport/Morehead City, North Carolina, telephone (252) 223-5737 and online at <http://www.erh.noaa.gov/er/mhx/>. Menu selection service or operator assisted as applicable. The Contractor shall satisfy himself as to the hazards likely to arise from the weather conditions during the beach fill period.

### 1.9.3 Weather/Physical Conditions

The location of the work is situated along the Bogue Banks beaches of the Towns of Emerald Isle and Indian Beach on the Atlantic Ocean in Carteret County, North Carolina. The area is at times exposed to high winds and severe waves. The offshore mean tide range is approximately 3.65 feet.

### 1.9.4 Condition of Beach Fill Areas

The required beach fill areas and quantity estimates specified are based on the condition of the beach at the time of the most recent surveys as indicated. The conditions shown by the surveys and the required beach fill quantities specified are subject to change due to the constantly changing shoreline and the natural forces of wind and waves acting on the beach. The actual quantities to be placed and paid for in each respective beach fill segment will be determined by the CE from the surveys and volume computations to be performed by the independent registered/certified surveyor as specified immediately before the Contractor commences fill operations in a respective beach fill section. The CE may make alterations in the plan dimensions, grade of slopes, or volume of fill per foot in a respective beach fill segment in order to increase or decrease the volume of fill placed along the beach. The Contractor shall work closely with the CE to ensure that the total quantity of sand allowed under this contract is placed as effectively as possible.

### 1.9.5 Responsibility

The Contractor shall hold and save harmless the Engineer and the Owner, their officers, and employees from all claims that may arise as a result of the Contractor's negligence in connection with the work performed under the contract, from Contractor noncompliance with the provisions of the contract drawings and specifications, or from the instruction of the CE.

## 1.10 LAYOUT OF WORK AND SURVEYS

### 1.10.1 General

The Contractor shall be responsible for the layout of all work, surveys, and beach fill volume computations; however, the Contractor must retain the services of an independent registered/certified Surveyor currently licensed in the State of North Carolina to perform and certify this work. This independent registered/certified Surveyor cannot be in the regular employ of the Contractor and must be approved by the CE. The markings to layout the work shall be placed in the immediate work areas only and shall not be removed until a respective work area has been completed and accepted for payment purposes by the CE. As applicable, the CE will furnish within 7 calendar days of receipt of a written request by the Contractor, the coordinates and monument descriptions for the existing horizontal control within vicinity of the work areas.

The Contractor shall be responsible for using this information to deposit the dredged beach fill material at the locations indicated. The Contractor shall be responsible for all costs to layout the work, to establish and maintain markings of the borrow areas and placement areas, all surveys and volume computations required of the Contractor, and the removal of all markings placed in a respective work area upon completion of the work as specified. The contract completion time will not be extended due to failure of the Contractor to adequately establish and maintain his markings of the work areas.

### 1.10.2 Datum and Bench Marks

The plane coordinates and bearings are based on the North Carolina State Plane Coordinate System, North American Datum 1983. The elevations for the beach work and dredging work are referenced to the North American Vertical Datum 1988 (NAVD 88).

### 1.10.3 Contractor Layout for Survey of Beach Requirements

The Contractor shall submit for approval a base line drawing showing all offsets, elevations, reference lines, and range line locations to be utilized for the entire project prior to performing any surveying. This drawing shall be prepared and stamped by the independent Professional Engineer or Surveyor employed as specified above.

### 1.11 SEAGOING BARGE ACT

All dredges, barges, and vessels used for the transport of dredged material shall meet the applicable requirements of the Seagoing Barge Act (46 U.S.C et seq). To document compliance with this act, the Contractor shall submit with his bid copies of U.S. Coast Guard Certificate of Inspection for each item of plant. Certification shall also be furnished to the CE if additional plant is engaged during the course of the work.

### 1.12 ACCOMMODATIONS ABOARD DREDGE FOR CONSTRUCTION REPRESENTATIVES

#### 1.12.1 Accommodations

- a. Work Space - The Contractor shall furnish regularly to the Owner's construction representatives on board the dredge a suitable working and storage space, equipped and maintained to the satisfaction of the CE or his representative. As a minimum the facilities shall include a desk with chair for plan study, and a file drawer, approximately 15" by 24", capable of being locked with a padlock. The working space need not be a separate room, but shall be properly lighted, ventilated, and heated.

#### 1.12.2 Costs

The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price. If the Contractor fails to meet these requirements, the CE will secure the facilities referred to above, and their costs will be deducted from payments due to the Contractor.

### 1.13 INSPECTION

#### 1.13.1 General

The presence of the construction representative shall not relieve the Contractor of responsibility for the proper execution of the work in accordance with the specifications. The Contractor will be required:

- a. To furnish, on the request of the CE or any construction representative, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual



equipment and crew of the dredging plant as may be reasonably necessary in inspecting and supervising the borrow work areas.

- b. To furnish, on the request of the CE or any construction representative, suitable transportation to and from all points within the beach fill placement area, to and from the various pieces of plant and the staging areas, and within the material placement area as may be reasonably necessary in inspecting and supervising the beach fill work. Should the Contractor refuse, neglect, or delay compliance with these requirements, the specific facilities may be furnished and maintained by the CE, and any resultant cost incurred by the CE will be deducted from any amounts due or to become due the Contractor.

#### 1.14 CONTINUITY OF BEACH FILL WORK

Placement of the beach fill shall proceed in an orderly and consecutive manner. No payment will be made for work done in any acceptance section of the beach designated by the CE until the entire acceptance section is brought to the shape and grade indicated and specified. When the Contractor moves his pipeline upon completion of a beach segment section and commences placing material in a manner that the new beach segment section adjacent to the completed section is tied into the completed section, acceptance for payment purposes will not be made on either section until both sections are completely finished contiguously.

#### 1.15 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army and the Commandant, U. S. Coast Guard. The Contractor is advised to contact the U.S. Coast Guard at (910) 815-4895 to discuss operations and appropriate lighting, markers, etc. for all dredge equipment.

#### 1.16 SAFETY AND ACCIDENT PREVENTION

##### 1.16.1 Safety Plan

The Contractor shall maintain at the job-site a contractor accident prevention plan per the U.S. Army Corps of Engineers (USACE) Safety and Health Requirements Manual (EM 385-1-1).

##### 1.16.2 Conflicts

The Contractor shall comply with Occupational Safety and Health Act (OSHA) Standards, Coast Guard, as well as the USACE Safety and Health Requirements Manual (EM 385-1-1), as well as the requirements of Section 01525 SAFETY AND OCCUPATIONAL HEALTH REQUIREMENTS. When a conflict exists between USACE Safety and Health Requirements Manual, nationally recognized consensus standards, or the contract plans and specifications, the most stringent requirements as determined by the CE will govern.

### 1.16.3 Dredge, Pump Out Buoys, Pipelines, and Attendant Plant

#### 1.16.3.1 Equipment and Machines

All operable equipment and machines shall be checked for:

- a. Manufacturer's safety instructions, permanent-mounted and easily read.
- b. Guard Rails and life-lines at overboard access areas, as applicable.
- c. Cover exposed moving parts with safety-guards to prevent someone from accidentally stepping or falling on them.

### 1.16.4 Dozers, Front-End Loaders, Backhoes, and Other Wheeled-Tract Machines

Dozers, front-end loaders, backhoes, and other wheeled-tract machines operated on the beach shall be equipped with rollover protection and seatbelts. All rotating or reciprocating parts, and any parts subject to high operational temperatures that are of such nature or so located as to be or become a hazard to the operating or attending personnel, shall be substantially guarded and insulated to the extent necessary to eliminate the hazard. Walking or working surfaces and platforms shall be of an anti-skid type.

#### 1.16.4.1 Checks

All front-end loader-backhoe machines and other machines, such as tractors that utilize a backhoe attachment, shall be checked for:

- a. Exposed backhoe boom swing foot pedals.
- b. Backhoe boom swing lever that can be reached by a man standing on the ground or on the outrigger support bracket.

#### 1.16.4.2 Controls

Where these conditions exist, guards shall be fabricated to:

- a. Cover over exposed foot pedals to prevent someone from accidentally stepping on them.
- b. Enclose the swing lever so as to preclude operation from the ground or from the outrigger support bracket.

### 1.16.5 Crawler-, Truck-, and Wheel-Mounted Cranes

- a. When a crane is performing duty cycle work (such as clamshell, dragline, grapple, or pile driving) it does not require anti-two block equipment. If the crane is required to make a non-duty cycle lift (for example, to lift a piece of equipment, a tool box, or supplies), it will be exempt from the anti-two block equipment requirements if the following procedures are implemented:

- 1) an international orange warning device (warning flag, warning tape, or warning ball) is properly secured to the hoist line at a distance of 8 to 10 feet above the hoist rigging;
- 2) the signalperson (or an individual designated as the signalperson) acts as a spotter to alert the crane operator with a "STOP" signal when the warning device approaches the boom tip and the crane operator ceases hoisting functions when alerted of this;
- 3) while the non-duty cycle lift is underway, the signal person shall not stand under the load, shall have no duties other than signalperson, and shall comply with the signaling requirements of EM 385-1-1; and

b. Anti-two block devices are always required when hoisting personnel by crane or derrick.

#### 1.16.6 Diving Operations

All diving operations shall be planned in accordance with the USACE Safety Manual EM 385-1-1 and must be limited to those tasks that cannot be accomplished in any other manner. The Contractor shall submit for approval all information which may affect the work to be accomplished, including divers names, medical examination reports, qualifications of all divers and top-side tenders to be employed in the diving operations, plant and equipment to be employed on the work, and a written dive plan with sketches and narrative descriptions for each phase of the planned dive.

#### 1.17 BRIDGE-TO-BRIDGE RADIO COMMUNICATION

In order that radio communication may be made with passing vessels, all dredges engaged in work under this contract shall be equipped with bridge-to-bridge radio telephone equipment. The radio telephone equipment shall operate on a single channel very high frequency (VHF), FM, on a frequency of 156.65 megahertz per second with low power output having a communication range of approximately ten miles. The Federal Communications Commission has approved the frequency.

##### 1.17.1 Radio

The Contractor shall provide the CE a portable radio capable of communicating with the dredge for the duration of work under this contract. The Contractor shall maintain the radio as required.

#### 1.18 NOTIFICATION OF COAST GUARD

Prior to commencement of work on this contract, the Contractor shall notify the Commander, Fifth Coast Guard District of his intended operations to dredge and request that it be published in the Local Notice to Mariners. This notification must be given in sufficient time so that it appears in the Notice to Mariners at least 5 workdays prior to the commencement of work on this contract.

##### 1.18.1 Local Notice to Mariners

The Local Notice To Mariners (LNM) for the Fifth Coast Guard District is available: on the Internet at: <http://www.navcen.uscg.gov/?pageName=InmDistrict&region=5>, and by phone at

(757) 398-6367 The LNM is the primary means for disseminating information concerning aids to navigation, hazards to navigation, and other items of marine information of interest to mariners on the waters of the United States, its territories, and possessions. These notices are essential to all navigators for the purpose of keeping their charts, light lists, Coast Pilots and other nautical publications up-to-date. These notices are published weekly. They may be obtained free of charge, by making application to:

Fifth Coast Guard District  
Federal Building  
431 Crawford Street  
Portsmouth, Virginia 23704

If the Contractor encounters any objects on the ocean bottom during dredging operations or transport of his plant that could be a hazard to navigation, he shall notify the Coast Guard immediately as to location and at the same time notify the CE.

## 1.19 ENVIRONMENTAL LITIGATION

### 1.19.1 Litigation

If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the CE, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the CE in the administration of this contract under the terms of the contract General Conditions, Article 15 SUSPENSION OF WORK AND TERMINATION. The period of such suspension, delay, or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof. The term "environmental litigation" means, a lawsuit alleging that the work will have an adverse effect on the environment or that the Owner has not duly considered, either substantively or procedurally, the effect of the work on the environment.

## 1.20 PHOTOGRAPHS

The Contractor shall, during the progress of the work, furnish the CE ground and aerial photographs depicting the progress of construction and project completion. A qualified, established commercial photographer shall be retained by the Contractor at his expense to take and develop all photographs throughout the entire life of the project. Aerial photographs shall be taken at an altitude of between 200 feet and 500 feet. Coverage shall cover an area approximately 1 mile north to 1 mile south of the fill area. Aerial photographs shall be taken as a minimum on a monthly basis and at each request for progress payments by the Contractor. The ground photographs shall be taken at each acceptance section in the scheduled work as follows unless directed otherwise by the CE:

- 1) immediately prior to filling operations, and
- 2) immediately after filling operations have been completed.

All photographs shall be in digital format. Each shall be identified by showing the date taken, contract title and number, and respective acceptance section identification with a brief description of what the photograph depicts. Digital files from all of the above photographs shall be given to and become the property of the CE. No separate payment will be made for the above services and all costs in connection with these services shall be considered incidental to the overall costs of the project.

**PART 2 PRODUCTS (NOT USED)**

**PART 3 EXECUTION (NOT USED)**

**END OF SECTION**

**Bid Document Register**

**Post-Florence Renourishment Project - Phase 1-Carteret County, NC**

\*\*\*Bid Opening: **November 20, 2018 @ 4:00 PM**

\*\*\*Pre-Bid Meeting: **October 26, 2018 1:00 PM\*\*\***

Set #	Date	Company Name	Contact Name	Address	Phone & Fax	Addendum #1 Email	Addendum #2 Email	Addendum #3 Email	Addendum #4 Email
Hard Copy	10/19/2018	Town of Indian Beach	Tim White <a href="mailto:admin@indianbeach.org">admin@indianbeach.org</a>	1400 Salter Path Road Indian Beach, NC 28512	252-247-3344	X	X	X	X
Hard Copy	10/19/2018	Town of Emerald Isle	Frank Rush <a href="mailto:frush@emeraldisle-nc.org">frush@emeraldisle-nc.org</a>	7500 Emerald Drive Emerald Isle, NC 28594	252-354-3424	X	X	X	X
Hard Copy	10/19/2018	Carteret County	Greg "Rudi" Rudolph <a href="mailto:grudolph@carteretcountync.gov">grudolph@carteretcountync.gov</a>	7500 Emerald Drive Emerald Isle, NC 28594	252-222-5835	X	X	X	X
ELECTRONIC	10/19/2018	Dodge Electronic Plan Room	<a href="http://planroom.construction.com">planroom.construction.com</a>			X	X	X	X
ELECTRONIC	10/22/2018	The Dutra Group <a href="http://www.dutragroup.com">www.dutragroup.com</a>	Loura Moore <a href="mailto:lmoore@dutragroup.com">lmoore@dutragroup.com</a>	2350 Kerner Blvd., Suite 200 San Rafael, CA 94901	415-258-6876	X	X	X	X
ELECTRONIC	10/22/2018	The Dutra Group <a href="http://www.dutragroup.com">www.dutragroup.com</a>	Harry Stewart <a href="mailto:hstewart@dutragroup.com">hstewart@dutragroup.com</a>	2350 Kerner Blvd., Suite 200 San Rafael, CA 94902	415-258-6876	X	X	X	X
ELECTRONIC	10/22/2018	Weeks Marine	Angel Fekete <a href="mailto:acfekete@weeksmarine.com">acfekete@weeksmarine.com</a>	304 Gaille Drive Covington, LA 70433	985-875-2500	X	X	X	X
ELECTRONIC	10/22/2018	Great Lakes Dredge & Dock Co., Inc. (Russ Zimmerman-SE Area Mgr)	Janice Heard <a href="mailto:JRHeard@gldd.com">JRHeard@gldd.com</a>	2122 York Road Oak Brook, IL 60523	630-574-3469	X	X	X	X
ELECTRONIC	10/22/2018	Manson Construction Co. (Southeast Regional Office)	Nancy Brooks, Dredging Est. Coord. <a href="mailto:dredgingprocurement@mansonconstruction.com">dredgingprocurement@mansonconstruction.com</a>	5958 Richard Street, Suite 1 Jacksonville, FL 32216	904-821-0211	X	X	X	X
ELECTRONIC	10/23/2018	Jay Cashman, Inc.	Michael Empey <a href="mailto:mempey@jaycashman.com">mempey@jaycashman.com</a>	549 South Street Quincy, MA 02169	617-890-0600	X	X	X	X
ELECTRONIC	10/23/2018	Gator Dredging	Chris Clausen <a href="mailto:c.clausen@gatordredging.com">c.clausen@gatordredging.com</a>	13630 50th Way N. Clearwater, FL 33760	727-527-1300	X	X	X	X
ELECTRONIC	10/23/2018	Weeks Marine	Belinda Crawford <a href="mailto:bcrawford@weeksmarine.com">bcrawford@weeksmarine.com</a>	304 Gaille Drive Covington, LA 70433	985-875-2500	X	X	X	X
ELECTRONIC	10/25/2018	Construct Connect	Megan Anderson <a href="mailto:megan.anderson@constructconnect.com">megan.anderson@constructconnect.com</a>			X	X	X	X
ELECTRONIC	10/26/2018	Gahagan & Bryant, Inc.	Chris Marelo <a href="mailto:ctmarelo@qba-inc.com">ctmarelo@qba-inc.com</a>	295-A North Green Meadows Drive Wilmington, NC 28405	910-313-3338	X	X	X	X
ELECTRONIC	10/29/2018	DRC Emergency Services. LLC	Jolie Bonvillian <a href="mailto:jolie@drcusa.com">jolie@drcusa.com</a>			X	X	X	X
ELECTRONIC	10/29/2018	Geodynamics, LLC	Chris Freeman <a href="mailto:chris@geodynamicsgroup.com">chris@geodynamicsgroup.com</a>	310A Greenfield Drive Newport, NC 28570	252-247-5785	X	X	X	X
ELECTRONIC	10/30/2018	Manson Construction Co. (Southeast Regional Office)	Jorge Beltran <a href="mailto:jbeltran@mansoncc.com">jbeltran@mansoncc.com</a>	5958 Richard Street, Suite 1 Jacksonville, FL 32216	904-821-0211	X	X	X	X
ELECTRONIC	11/6/2018	Southern Disaster Recovery	Randell Thompson <a href="mailto:rthompson@atmc.net">rthompson@atmc.net</a>		910-398-1818	X	X	X	X
ELECTRONIC	11/7/2018	Ecological Restoration & Mgmt, Inc.	Griff Evans <a href="mailto:gevans@er-m.com">gevans@er-m.com</a>			X	X	X	X
ELECTRONIC	11/8/2018	McKim and Creed	Todd King <a href="mailto:tking@mckimcreed.com">tking@mckimcreed.com</a>			X	X	X	X
ELECTRONIC	11/9/2018	Carolina Environmental Contracting, Inc.	James Poe <a href="mailto:j.poe@carolinaenvironmentalcontracting.com">j.poe@carolinaenvironmentalcontracting.com</a>			X	X	X	X
ELECTRONIC	11/9/2018	Callan Marine, Ltd.	Sarah Dearing <a href="mailto:birds@callanmarineltd.com">birds@callanmarineltd.com</a>			X	X	X	X
ELECTRONIC	11/9/2018	Aquatic Plants of Florida, Inc	Gil Sharell, Jr. <a href="mailto:gil@apofl.com">gil@apofl.com</a>	8120 Blaikie Court Sarasota, FL 34240	941-378-2700	X	X	X	X
ELECTRONIC	11/12/2018	TI Coastal Services, Inc.	Chris Gibson <a href="mailto:clgibson@ticoastal.com">clgibson@ticoastal.com</a>			X	X	X	X
ELECTRONIC	11/14/2018	Santee Modular Homes, Inc.	Judy Shuler <a href="mailto:judy@santeedebris.com">judy@santeedebris.com</a>			X	X	X	X